

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 09-10017-GAO
TAREK MEHANNA,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

DAY SEVEN
JURY TRIAL

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Wednesday, November 2, 2011
9:08 a.m.

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Cheryl Dahlstrom, RMR, CRR
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GREGORY J. MAJOR				
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No. 298	One-Page document		38
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1 (The following proceedings were held in open court
2 before the Honorable George A. O'Toole, Jr., United States
3 District Judge, United States District Court, District of
4 Massachusetts, at the John J. Moakley United States Courthouse,
5 One Courthouse Way, Boston, Massachusetts, on November 2, 2011.

6 The defendant, Tarek Mehanna, is present with counsel.
7 Assistant U.S. Attorneys Aloke Chakravarty and Jeffrey Auerhahn
8 are present, along with Jeffrey D. Groharing, Trial Attorney,
9 U.S. Department of Justice, National Security Division.)

00:02 10 THE CLERK: All rise for the Court.

11 (The Court and jury enter the courtroom at 9:08 a.m.)

12 THE CLERK: For a continuation of the Mehanna trial.

13 THE COURT: Good morning.

14 COUNSEL IN UNISON: Good morning.

15 THE COURT: The clerk told me someone wanted to talk
16 about something before the jury came out? No?

17 MR. CARNEY: May I have one second, your Honor,
18 please?

19 THE COURT: I'd be happy not to.

00:25 20 MR. CARNEY: May we just have 30 seconds?

21 MS. BASSIL: I think we can delay this for a moment.

22 (Pause.)

23 MR. CARNEY: We may need to speak to your Honor before
24 the next witness, but before that happens I'll be asking to
25 speak with the prosecutors.

1 MS. BASSIL: We may be able to defer this dispute for
2 the moment.

3 THE COURT: Or solve it?

4 MS. BASSIL: Maybe.

5 (Laughter.)

6 THE COURT: So, all right, are we ready for the jury,
7 then?

8 MS. BASSIL: Yes. Yes.

9 MR. CARNEY: Please.

00:27 10 (Pause.)

11 THE CLERK: All rise for the jury.

12 (The jury enters the courtroom at 9:11 a.m.)

13 THE CLERK: Please be seated.

14 THE COURT: Good morning, jurors.

15 THE JURORS: Good morning.

16 THE COURT: Mr. Chakravarty, you may proceed.

17 MR. CHAKRAVARTY: Thank you, your Honor.

18 VEERA BOONYASAIT, resumed

19 REDIRECT EXAMINATION

00:28 20 BY MR. CHAKRAVARTY:

21 Q. Good morning, Mr. Boonyasait.

22 A. Good morning.

23 Q. When we left we were talking about the Tibyan Publications
24 forum, and I just have a few more questions with regards to
25 following up on Mr. Carney's questions.

1 Mr. Boonyasait, you were asked about the diversity views
2 on the Tibyan Publications website. Did you have an
3 opportunity to review a number of messages on that site?

4 A. I have.

5 Q. Were you able to review all of the messages on that site?

6 A. No, I have not.

7 Q. Approximately how much content was on there?

8 A. There were several thousand number of posted messages.

9 Q. So did you -- in the messages that you saw, how would you
00:29 10 describe, in your words, the diversity views?

11 MR. CARNEY: I object.

12 THE COURT: No, overruled.

13 You may have it.

14 THE WITNESS: I thought they were mostly pro jihad and
15 talked.

16 MR. CARNEY: Motion to strike. The messages are in
17 evidence.

18 THE COURT: No, it was part of the cross-examination.

19 You may have it.

00:29 20 MR. CHAKRAVARTY: Can we call up Exhibit 426, please?
21 This is one of the exhibits in evidence.

22 BY MR. CHAKRAVARTY:

23 Q. I'm sorry, can you read this? Just can you tell us what
24 it is?

25 A. Yes. It's a private message.

1 Q. And I'm just going to focus on this one raised. "But
2 still exercise relative safety when sending anything." Did I
3 read that correctly?

4 A. Yes, you did.

5 Q. And on a web forum what does that mean to you?

6 A. It means that this person should be aware that he is
7 sending some things sensitive.

8 Q. And is the sender of that message Abu Sabaayaa?

9 A. Yes.

00:30 10 Q. You were asked several questions about whether the
11 defendant disagreed with certain content.

12 MR. CHAKRAVARTY: I'm going to ask you to call up
13 Exhibit 420, please. If we could go to page 2. Highlight this
14 first sentence.

15 Q. And the "I" is on the previous page. Does this sentence
16 say, "I used to believe this but after long reflection and
17 thought, I have come to the conclusion (and Allah knows best)
18 that this is an incorrect concept"? Have I read that
19 correctly?

00:31 20 A. Yes.

21 MR. CHAKRAVARTY: I'm sorry. Can you go back to the
22 previous page?

23 Q. And again, this is a post by Abu Sabaayaa?

24 A. Yes.

25 MR. CHAKRAVARTY: Next page, please.

1 Q. And in that same -- Abu Sabaayaa continues: "Every
2 American in the world, civilian or military, can be killed on
3 the spot." He's disagreeing with that. And he says, "No,
4 rather, those who fight us should be fought. Those who" -- in
5 bold -- "fight us, not those who carry the same nationality as
6 those who fight us." Did I read that correctly?

7 A. Yes.

8 Q. You were asked some questions about some of the religious
9 language in some of the posts that the defendant had made.

00:32 10 MR. CHAKRAVARTY: Can we call up Exhibit 412? Second
11 page, please? Sorry. Page 4. Sorry.

12 Q. And you were asked about emboldened language and whether
13 those were Koranic verses. Do you recall that?

14 A. Yes.

15 Q. And is this an example of what you were talking about?

16 A. Yes.

17 Q. And there's a bracket to suggest that this is from some
18 Hadith or some religious piece of literature?

19 A. Yes.

00:33 20 Q. But then there's other emboldened language which is not
21 necessarily accompanied by that bracket. Isn't that right?

22 A. Yes.

23 Q. And does this last paragraph read, "And because of the
24 word, the battalions of suicide fighters will remain, and
25 because of it, the word of disbelief will fall underneath the

1 feet of the mujahideen, as Allah has made the word of those who
2 disbelieve the lowest, and the word of Allah the highest, until
3 the day of judgment, and this is the significance of the word."
4 Did I read that correctly?

5 A. Yes.

6 Q. You were asked questions about the spectrum of views on
7 the Tibyan Publications where al Qa'ida was the most extreme.
8 Do you remember that?

9 A. Yes.

00:33 10 MR. CHAKRAVARTY: I'd ask to call up Exhibit 423,
11 please. Can we go to page 2?

12 Q. Again, this is a post by Abu Sabaayaa?

13 A. Yes.

14 Q. In one paragraph he says, "If the majority of the victims
15 of the Riyadh attacks were involved in fighting or plotting
16 against the Muslims, then I have no problem with those
17 particular attacks. If they were school teachers, civil
18 engineers and whatnot, or otherwise not having been proven to
19 be fighting in one way or the other by weapons, opinions,
00:34 20 words, then I don't see any clear justification from the
21 Sharee'ah for killing them." Did I read that correctly?

22 A. Yes.

23 MR. CHAKRAVARTY: Go to the next page, please?

24 Q. Again, is this a post by Abu Sabaayaa?

25 A. Yes.

1 Q. And does he say, "My beloved brother Abu Dujanah and I
2 just had a related conversation and we agreed to post it here
3 for its clarity, and (inshaa-Allaah) it being an example of an
4 effort to have a polite and respectful debate without any hard
5 feelings."

6 And below that does this appear to be a stored instant
7 messaging chat?

8 A. Yes.

9 Q. And this is something that appears to be cut and pasted
00:35 10 into Tibyan Publications web forum. Is that right?

11 A. Correct.

12 Q. Now I'm going to direct your attention to about halfway
13 down in this chat. And I'll just read this and ask if I read
14 it correctly. Abu Dujanah said, "What about Usaamah's
15 requests?" And a person in Arabic script who, because this is
16 a post by Abu Sabaayaa, it's presumably Abu Sabaayaa, says,
17 "This is understood by many to mean the military, not school
18 teachers, et cetera. In fact, this is what his words are, that
19 the presence of the military is disposed, but he never
00:36 20 mentioned your average Joe Kaafir working at an oil firm." And
21 then Abu Dujanah says, "I think I can find statements where he
22 generalizes and means them all."

23 Did I read that correctly?

24 A. Yes.

25 MR. CHAKRAVARTY: Go to the next page?

1 Q. And this chat continues. Is that right?

2 A. Yes.

3 Q. And then Abu Sabaayaa continues: "I may be wrong, of
4 course, but I had the other opinion for years, so I'm not
5 disagreeing out of bigoted blindness. It just seems to me that
6 when I look at the actions of the Prophet and try to apply it
7 to today, I don't see a similarity between what he did and what
8 I'm arguing against. Technically speaking, yes, the blood of
9 all of these kuffaar is, in its mubaah, but we need to look at
00:37 10 how the messenger applied this ruling even when he did Jihaad
11 at-Talab. He generally didn't invade the kuffaar without any
12 warning and start killing randomly, as far as I know. So there
13 was a process."

14 Then it goes down. Abu Dujanah says, "He chose the best
15 targets, not any old target, et cetera.

16 "I agree. This is from the figh and the wisdom gained."

17 And then Abu Sabaayaa says, "Right. So this is why I said
18 if the targets were involved in fighting the Muslims in any
19 way, then I am all for what happened."

00:38 20 Did I read that correctly?

21 A. Yes.

22 Q. You were asked about Exhibit 419.

23 MR. CHAKRAVARTY: Can you pull that up, page 2,
24 please?

25 Q. Just to clarify again, is this a post by Abu Sabaayaa?

1 MR. CHAKRAVARTY: Can we go back to the previous page?

2 A. Yes, it is.

3 MR. CHAKRAVARTY: Next page?

4 Q. Does he say, "If we are speaking about the American
5 military presence in the peninsula" -- when he says
6 "peninsula," do you know what he's referring to?

7 A. The Arabian peninsula, presumably.

8 Q. And is that where Saudi Arabia is?

9 A. Yes, it is.

00:38 10 Q. And Riyadh is the capital of Saudi Arabia. Is that right?

11 A. Yes.

12 Q. "If we're speaking about the American military presence in
13 the peninsula, or any other hostile forces or people, then I
14 wholeheartedly agree with applying the above." Did I read that
15 properly?

16 A. Yes.

17 Q. And then the last paragraph does he say: "There is a
18 contrast between these recent Riyadh attacks, which did not
19 cause the deaths of any known American military personnel, and,
00:39 20 for example, the killing of Paul Johnson - who was admittedly
21 working on Apache helicopter repairs." Did I read that
22 correctly?

23 A. Yes.

24 Q. So is he contrasting the killing of non-military personnel
25 with military personnel?

1 A. Yes.

2 Q. And is he including somebody who is --

3 MR. CARNEY: I object, your Honor.

4 THE COURT: Sustained.

5 MR. CARNEY: Leading the witness.

6 THE COURT: Sustained.

7 BY MR. CHAKRAVARTY:

8 Q. Mr. Boonyasait, do you know how Paul Johnson was killed?

9 A. No, I do not.

00:39 10 MR. CHAKRAVARTY: That's all I have, your Honor.

11 THE COURT: Mr. Carney?

12 MR. CARNEY: Thank you.

13 RECROSS-EXAMINATION

14 BY MR. CARNEY:

15 Q. Good morning again, sir.

16 A. Good morning.

17 Q. You stated that there were 7,000 postings on Tibyan?

18 A. I said there were several thousands.

19 Q. I'm sorry. Several thousands.

00:40 20 The ones you looked at were the ones that the prosecutors
21 selected for you to look at. Is that right?

22 A. Not all of them. I looked at some of the others.

23 Q. About how many others did you look at?

24 A. Maybe five, ten.

25 Q. Okay.

1 A. As continuations --

2 Q. So out of several thousand, except for the five or ten
3 thousand that you looked at, all of them were selected by the
4 prosecutors for you to look at, right?

5 A. Yes.

6 Q. And you don't, therefore, have information about the rest
7 of what was on that web forum, do you?

8 A. No.

9 Q. Now, the prosecutor just went over, again today, some of
00:41 10 the things that we had gone over yesterday and asked you some
11 questions about them. Is that right?

12 A. Yes.

13 Q. Would you agree, based on the documents that you read this
14 morning again for the jurors, that it's clear that
15 Tarek Mehanna's view was that Muslims in a Muslim country had
16 the right to fight invading soldiers or other military whether
17 from the United States or another country? Isn't that fair to
18 say?

19 A. That's fair to say.

00:41 20 Q. This is comparable to Muslims in Afghanistan fighting the
21 Soviet Union when they invaded, isn't it?

22 MR. CHAKRAVARTY: Objection.

23 THE COURT: Sustained. Argumentative.

24 MR. CARNEY: Pardon me?

25 THE COURT: Argumentative.

1 BY MR. CARNEY:

2 Q. But Mr. Mehanna always drew a distinction about people who
3 were not in the military based on those emails that you read
4 this morning and have read.

5 MR. CHAKRAVARTY: Objection, your Honor.

6 THE COURT: You may answer that.

7 THE WITNESS: Could you repeat that, please?

8 BY MR. CARNEY:

9 Q. Yes, sir. But based on reading what Mr. Mehanna wrote, he
00:42 10 consistently made a distinction with people who were not part
11 of the military invading a Muslim country, didn't he?

12 A. Somewhat, yes.

13 Q. For example, he specified teachers and said they're not
14 part of the invading force and, therefore, they're not subject
15 to being fought against or killed. Isn't that right?

16 A. Yes.

17 Q. He mentioned an oil engineer working in a Muslim country
18 who's not part of the military is not subject to being killed
19 because he's not part of the invading army in that Muslim
00:43 20 country like Iraq, right?

21 A. Yes.

22 Q. Didn't he specifically use the phrase, and correct me if
23 I'm wrong, "oil engineer"?

24 A. Yes.

25 Q. And, of course, these Muslim countries are the source of

1 so much oil that the United States uses, right?

2 MR. CHAKRAVARTY: Objection.

3 MR. CARNEY: I'll withdraw the question before I ask
4 the Court to take judicial notice.

5 BY MR. CARNEY:

6 Q. And so that the bottom line is in the face of other people
7 on these web forums -- on this web forum saying anybody who is
8 from a non-Muslim country can be killed, Mr. Mehanna
9 consistently pushed back against that view and said it's only
00:44 10 appropriate to fight the military. Isn't that true?

11 A. For that one thread, yes.

12 Q. When threatened by something like being invaded by the
13 United States?

14 MR. CHAKRAVARTY: Objection.

15 BY MR. CARNEY:

16 Q. Is that right? Is that what you mean?

17 THE COURT: I think you misheard the witness.

18 MR. CARNEY: Oh, okay.

19 THE COURT: He said "in the thread," not "the threat."

00:44 20 BY MR. CARNEY:

21 Q. You didn't say "threat"?

22 A. No.

23 Q. My mistake. So he would say this in the thread?

24 A. Thread.

25 Q. Thread?

1 A. T-H-R-E-A-D.

2 Q. My fault. Okay. And that's clear throughout all of these
3 postings that you went over that Mr. Chakravarty, the
4 prosecutor, asked you to go through again today, right?

5 A. That's fair to say.

6 MR. CARNEY: Okay. That's all I have.

7 Thank you, your Honor.

8 MR. CHAKRAVARTY: Nothing else.

9 THE COURT: All right. Thank you, sir. You may step
00:45 10 down.

11 (The witness is excused.)

12 MR. AUERHAHN: Lisa Cline, please.

13 LISA A. CLINE, duly sworn

14 THE CLERK: Please be seated.

15 State your name and spell your last name for the
16 record.

17 THE WITNESS: Lisa Cline, C-L-I-N-E.

18 DIRECT EXAMINATION

19 BY MR. AUERHAHN:

00:46 20 Q. Good morning.

21 A. Good morning.

22 Q. How are you employed?

23 A. I'm employed by the FBI as a special agent.

24 Q. And how long have you been so employed?

25 A. I've been employed with the FBI since 1999.

1 Q. Where are you currently assigned?

2 A. I'm assigned to the Lakeville resident agency.

3 Q. And just generally, what are your duties?

4 A. In the resident agency we cover all criminal aspects.
5 Right now I'm working counterintelligence, and I previously
6 worked counterterrorism.

7 Q. You have a tendency to talk very fast.

8 A. I'm sorry.

9 Q. If you could slow down just a little bit.

00:46 10 Were you there in 2006?

11 A. I was.

12 Q. I want to draw your attention specifically to December 13,
13 2006. Do you recall where you went that day?

14 A. I do. I went to 16 Eric Road, Number 11, in Mansfield,
15 Massachusetts.

16 Q. And what kind of building or building complex was that?

17 A. It's an apartment complex.

18 Q. So there were other --

19 A. There were several buildings in that complex.

00:47 20 Q. And just generally, what was your purpose in going there
21 that day?

22 A. In the Lakeville resident agency we cover Mansfield --

23 MR. CARNEY: Your Honor, I have to reiterate what
24 Mr. Auerhahn said. Could she please talk --

25 THE COURT: Please slow down. It's going to be

1 difficult for the jury, I think, as well as the counsel to
2 absorb it if you go that fast.

3 THE WITNESS: Sorry.

4 THE COURT: Take a breath.

5 THE WITNESS: In the Lakeville resident agency we
6 cover -- our territory includes the town of Mansfield. And the
7 Boston office had asked me to assist in an electronic
8 monitoring in Mansfield, which is part of our territory.

9 BY MR. AUERHAHN:

00:47 10 Q. And you mentioned earlier you went to Apartment 11. Was
11 that the target of the interception?

12 A. Correct.

13 Q. The electronic interception?

14 And who lived in that apartment?

15 A. Insaf Masood.

16 Q. And where was Mr. Masood at the time?

17 A. He was overseas.

18 Q. Was someone else living there at the time?

19 A. Tarek Mehanna was living there.

00:47 20 Q. And do you -- the Tarek Mehanna who was living there, is
21 he in the courtroom today?

22 A. He is.

23 Q. Can you identify him for the record, please?

24 A. He's sitting over at that table.

25 Q. In a gray suit?

1 A. Yes. Gray suit and beard.

2 MR. AUERHAHN: May the record reflect she's identified
3 the defendant.

4 THE COURT: Yes.

5 MR. AUERHAHN: Thank you, your Honor.

6 BY MR. AUERHAHN:

7 Q. Now, were you there alone or with other agents?

8 A. I was with a technical agent.

9 Q. And were there other agents in the area?

00:48 10 A. There were agents conducting surveillance at the time.

11 Q. Now, what were the -- and again in general terms, what
12 were the duties of the technical agent and what were your
13 duties on that day?

14 A. I was really there just to assist if they needed anything.
15 I actually started the recording, stopped the recording; the
16 technical agent handled all the installation.

17 Q. And who was responsible for turning the tape on, turning
18 the tape off?

19 A. I did.

00:48 20 Q. And during the actual period of the interception, did you
21 have anything so you could listen to the conversations being
22 recorded?

23 A. I had headphones.

24 Q. And were you -- at the time you arrived and were in place,
25 was Mr. Mehanna already in the apartment?

1 A. I don't recall if he was there when we arrived. I believe
2 we arrived before him. He did arrive approximately one hour
3 prior to us beginning the recording, but I believe we were
4 actually on-site before he was.

5 Q. And did the recording begin after someone else arrived?

6 A. Daniel Spaulding had arrived, and at that time we had
7 initiated the recording.

8 Q. And during the actual recording of the conversation you
9 said you had headphones on?

00:49 10 A. I did.

11 Q. So could you hear the conversation that was taking place?

12 A. Unfortunately, the recording, it was very difficult to
13 hear, so I could hear voices, but I couldn't really make out
14 the conversation.

15 Q. So you could tell there was conversation but you couldn't
16 discern the words?

17 A. Correct.

18 Q. And was all the recording done on one tape or on two
19 tapes?

00:49 20 A. The recording was done on two tapes. After approximately
21 one hour I switched the tapes so it wouldn't run out.

22 Q. Do you recall approximately what time you turned the first
23 tape on and what time you turned the first tape off?

24 A. I turned the first tape on at approximately 6:34 p.m.,
25 which is the time Mr. Spaulding arrived, and then I switched

1 the tapes at approximately 7:30 p.m., before it would run out.

2 Q. And then you put a second tape in the recorder?

3 A. At 7:30 p.m. And I turned that tape off at 8:22 p.m.,
4 approximately.

5 Q. And did you stay in your location after that period of
6 time?

7 A. I did.

8 Q. Now, at some point did you renew the second tape from the
9 recording device?

00:50 10 A. We turned the tape off at approximately 8:22 p.m., and
11 then we didn't remove it until approximately 10:34 p.m.

12 Q. And what did you do with each of the tapes after you
13 removed them?

14 A. I took both of the tapes and turned them over to the case
15 agent, Tom Daly, at approximately 11:30 p.m.

16 MR. AUERHAHN: May I approach, your Honor?

17 THE COURT: You may.

18 BY MR. AUERHAHN:

19 Q. I'm going to place before you two light brown envelopes,
00:51 20 one marked 1D34 and one 1D35. Do you recognize what those are?

21 A. I do. These are the two envelopes that I placed the tapes
22 in that evening.

23 Q. And do you recognize your handwriting on the outside of
24 the envelope?

25 A. I do.

1 Q. Okay. And are those called custody envelopes?

2 A. They are.

3 Q. Okay. And are they specifically for electronic
4 interceptions?

5 A. They are.

6 Q. And so there was a part at the top that you filled out?

7 A. Correct.

8 Q. And what, just sort of, general information do you put on
9 the top of that envelope?

00:51 10 A. I just put my name, the authority, who the case agent is,
11 what type of tape it is, who was actually intercepted during
12 the conversation, what time I removed it from the equipment.

13 Q. And I don't know if you said so, but the date, I assume,
14 correct?

15 A. Correct. And the date and the location of the recording.

16 Q. And you put each tape in a separate envelope?

17 A. Correct.

18 Q. And what did you do with those envelopes?

19 A. Then I turned these envelopes over to Tom Daly.

00:52 20 Q. And who's Tom Daly?

21 A. Tom Daly is the case agent.

22 Q. Did you indicate on the outside of the envelope that you
23 had done that?

24 A. I did.

25 Q. And did Mr. Daly then sign it indicating he had received

1 it?

2 A. He did.

3 Q. And did the chain of custody continue after you
4 relinquished custody of those tapes?

5 A. It does.

6 Q. Now, the interception you conducted on that day, was that
7 pursuant to a court order?

8 A. It was.

9 MR. AUERHAHN: Thank you. Nothing further.

00:52 10 MR. CARNEY: I have no questions, your Honor. Thank
11 you.

12 THE COURT: All right, Ms. Cline. Thank you. You may
13 step down.

14 THE WITNESS: Thank you.

15 (The witness is excused.)

16 MR. GROHARING: The government will call Greg Major.

17 GREGORY J. MAJOR, duly sworn

18 THE CLERK: Please be seated.

19 State your name and spell your last name for the
00:53 20 record, please.

21 THE WITNESS: Gregory J. Major, M-A-J-O-R.

22 DIRECT EXAMINATION

23 BY MR. GROHARING:

24 Q. Good morning, sir.

25 A. Good morning.

1 Q. Where do you work?

2 A. I work for the Federal Bureau of Investigation.

3 Q. How long have you worked for the FBI?

4 A. I've worked for the FBI for the last 37 years.

5 Q. And what is your current assignment with the FBI?

6 A. I'm assigned with the Forensic Audio/Video Imaging
7 Analysis Unit, part of the Operation and Technology Division,
8 part of FBI headquarters located at the engineering research
9 facility located in Quantico, Virginia.

00:54 10 Q. How long have you held that position?

11 A. I've held that position for the last 27 years.

12 Q. Sir, what is your educational background?

13 A. I have a bachelor's degree from St. Edwards University
14 located in Austin, Texas. I graduated with honors; and other
15 post-technical courses.

16 Q. And have you received any training related to your work?

17 A. Yes, I have. I've received some four years of extensive
18 training doing this kind of work. During those four years of
19 extensive training I was given a number of things. The first
00:55 20 thing that I was given as a trainee was what I call

21 "administrative training." I was given training how to make
22 notes and write reports.

23 I was encouraged by the examiners that were training me to
24 take a number of courses. I call it "academic training." I
25 took a number of courses in the Washington, D.C., area while I

1 was in training. One of the classes that I took was in
2 Rockville, Maryland. I took a number of courses in
3 electronics, math, physics, from a community college. That
4 college was Montgomery College.

5 I took another course in Rockville, Maryland, in
6 electroacoustics. Another course that I took, I had to travel
7 to Pittsburgh, Pennsylvania. The name of the company was
8 called AVNC. It was a signal processing course.

9 Q. Excuse me for interrupting, sir, but is it fair to say
00:56 10 you've had a number of courses throughout your career?

11 A. Yes, I have.

12 Another part of the training that was given to me was what
13 I call hands-on training. I did some 200 enhancement
14 examinations while I was in training.

15 Another thing that I did was I was given technical
16 training in the use of the various equipment we had in the
17 laboratory. The technical training we're talking about is the
18 various recorders we had. They may have been microcassettes,
19 audio cassettes, open reels. Also, I was given technical
00:56 20 training of the various audio filters we had and the computers
21 we use.

22 Q. Sir, throughout the course of your career how many tapes
23 would you estimate that you've examined?

24 A. I've examined well over 3,000 audio recordings.

25 Q. Have you also instructed FBI personnel as well as

1 personnel of other federal and state agencies regarding the
2 analysis of audio recordings?

3 A. Yes, I have. I've given training to state, local, federal
4 and even international law enforcement personnel. These are
5 law enforcement personnel that regularly tour through the
6 national academy located at the FBI training division located
7 at Quantico, Virginia.

8 I've given also some training to some federal prosecutors,
9 and on one occasion given training to some physics students
00:57 10 that were visiting our facility from Mary Washington College
11 located in Fredericksburg, Virginia.

12 Q. And, sir, have you been qualified to testify as an expert
13 in court before?

14 A. Yes, I have.

15 Q. On approximately how many occasions?

16 A. I have been qualified some 45 times.

17 Q. And at some point were you asked to assist in the
18 investigation of this case?

19 A. Yes, I was.

00:58 20 Q. What were you asked to do?

21 A. Number one, I received two audio cassettes from the FBI.
22 A special agent, Heidi Williams, had sent a letter asking that
23 I analyze, or examine, two audio cassettes to determine whether
24 I could make enhanced copies of each one.

25 MR. GROHARING: May I approach, your Honor?

1 THE COURT: You may.

2 BY MR. GROHARING:

3 Q. Sir, do you recognize those two envelopes?

4 A. Yes, I do.

5 Q. What are they?

6 A. These are the chain-of-custody envelopes that I received
7 from Special Agent Heidi Williams.

8 Q. How do you know that they are those envelopes?

9 A. They have my name on the chain of custody. When I sign
00:59 10 the chain of custody, I go ahead and take custody over the
11 evidence at that point.

12 Q. And what did you do once you received those envelopes and
13 those tapes?

14 A. The first thing I did after I signed the chain-of-custody
15 envelope, I took the cassette out and I marked the -- each
16 cassette with a laboratory number, a specimen number, my
17 initials and date.

18 Q. And what did you do after that?

19 A. From there, after I went ahead and I marked the evidence,
00:59 20 I played the tape back for the first time and I noted the audio
21 characteristics in the problem areas on the tape.

22 The next thing I did was I went ahead and I viewed the
23 audio signal. We use a spectral analyzer to actually
24 physically see the signal.

25 Q. Sir, can you please just explain briefly and in laymen's

1 term what a spectral analyzer is?

2 A. A spectral analyzer is a monitor that displays the audio
3 signal. I like to compare that to much like an electronic
4 technician would use an oscilloscope to see the various
5 component parts. Also, I would equate it to a heart-monitoring
6 device that a doctor may use.

7 What the spectral analyzer does, it enables the examiner
8 to see various parts of the audio signal. As the tape is being
9 played, it shows up as what I call a dancing line. It's very
01:00 10 important that the examiner see that because he can identify
11 the various background noises from it. He can see on the
12 vertical scaling the amplitude, or how loud it is; he can see
13 the bandwidth; he can see the various component parts of the
14 background noise.

15 The background noise may be on one end of the spectrum
16 like you would see from some bassiness, it might be in the
17 center of the spectrum where it might be some hum, or it might
18 on the other end of the spectrum where there would be audio
19 hiss.

01:01 20 Q. So after you conducted this analysis, what did you do with
21 the cassettes?

22 A. After I went ahead and I did the enhancement, I went ahead
23 and I reviewed the enhanced copies. I marked the enhanced
24 copies with the same corresponding information as on the
25 original cassettes, and I sent both the original audio

1 cassettes and enhanced copies back to Special Agent Heidi
2 Williams in the Boston office.

3 Q. And you mentioned an enhanced copy. What exactly was the
4 enhancement that you conducted?

5 A. What I did was I made three enhanced audio copies, each of
6 which were on a compact disk. The enhancement was what I call
7 an improvement over the original recording, and it was a much
8 clearer and more understandable recording.

9 MR. GROHARING: May I approach, your Honor?

01:02 10 THE COURT: You may.

11 BY MR. GROHARING:

12 Q. Sir, do you recognize the envelope that I've just handed
13 you?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's a chain-of-custody envelope.

17 Q. And what is -- do you recognize your name on that
18 envelope?

19 A. No, I do not.

01:02 20 Q. Do you recognize the contents of the envelope?

21 A. Yes, I do.

22 Q. What are they?

23 A. The contents of the envelope contain the two CD copies
24 that I made that were enhanced copies of each one of the
25 original audio cassettes. They have my initials, date,

1 corresponding laboratory number and specimen number.

2 Q. And how did you send those copies back to the FBI?

3 A. I sent them back via FedEx back to Special Agent Heidi
4 Williams.

5 Q. And then they were placed in the chain-of-custody envelope
6 at that point. Is that your understanding?

7 A. No, they were not. What I did was I sent them back in
8 this plastic envelope.

9 Q. And then when they got back to the FBI is when they were
01:03 10 placed in the chain-of-custody envelope. Is that your
11 understanding?

12 A. I assume they were.

13 Q. Now, throughout the course of your analysis and the
14 enhancement you just described, did you alter the substance of
15 any of the words of the speakers that were contained on that
16 recording?

17 A. No, I did not.

18 MR. GROHARING: That's all the questions I have, your
19 Honor.

01:03 20 MR. CARNEY: I have nothing. Thank you, your Honor.

21 THE COURT: All right, Mr. Major. Thank you. You may
22 step down.

23 THE WITNESS: Thank you.

24 (The witness is excused.)

25 MR. GROHARING: The next witness is Tyrone Via.

1 TYRONE T. VIA, duly sworn

2 THE CLERK: Please be seated.

3 State your name and spell your last name for the
4 record.

5 THE WITNESS: My name is William T. Via. The last
6 name is spelled V-I-A.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. GROHARING:

01:05 10 Q. Good morning, sir.

11 A. Good morning.

12 Q. Where do you work?

13 A. I work for the FBI.

14 Q. And how long have you been employed with the FBI?

15 A. For 23 years.

16 Q. What is your current position?

17 A. Currently I am assigned to the Operation Technology
18 Division as a unit chief of the Telecommunications, Intercept
19 and Collection Technology Unit.

01:05 20 Q. And what are your responsibilities in that position?

21 A. As unit chief of TICT-2, which is the acronym for the name
22 of the unit, I'm responsible for providing electronic
23 surveillance equipment to the entire FBI. And that equipment
24 can be for Title 3, which is criminal collection, or for Title
25 50, which is the FISA collection equipment.

1 Q. And do you have other responsibilities in that office as
2 well?

3 A. Yes, sir. I'm responsible for seven other programs within
4 the unit.

5 Also with the collection equipment that I am responsible
6 for, we do the purchasing of equipment; we provide the
7 equipment to the field office; we install the equipment; we do
8 training to the technical training agents in the field; we do
9 lifecycle support of that equipment; and also we're responsible
01:06 10 for the 24-7 helpdesk to ensure that equipment stays up and
11 running at all times.

12 Q. What did you do before joining the Operational Technology
13 Division?

14 A. I spent six years in a Los Angeles field office, from 1993
15 to 2000 -- 1993 to 1998 in the Los Angeles division. And from
16 1988 to 1993 I was assigned to the Pittsburgh field office.

17 Q. You mentioned before the term "technically trained agent."
18 What is a "technically trained agent"?

19 A. A technically trained agent is a special agent of the FBI
01:07 20 who has chosen to go into the technical aspect of being an
21 agent. This person would work in a central monitoring plant,
22 at a field office, working with the collection equipment as
23 well as other type of assistance to case agents doing
24 investigations.

25 Q. And, sir, in your duties with the operational technology

1 division, are you familiar with the procedures the FBI follows
2 to intercept telephone calls?

3 A. Yes, I am.

4 Q. And are you familiar with the procedures that the FBI
5 follows to intercept calls pursuant to authorization from the
6 Foreign Intelligence Surveillance Court?

7 A. Yes, I am.

8 Q. How much training have you had in that regard?

9 A. I became a technical training agent 20 years ago. And so
01:08 10 I did this type of work in the Los Angeles field office, and
11 from the Los Angeles field office I transferred to the unit
12 which is called TICT-2 where I was a supervisor doing the same
13 type of work, working with the FISA collection equipment. And
14 then I became the unit chief of the same unit where I became
15 responsible for the entire unit.

16 MR. GROHARING: Could I have the exhibit displayed for
17 the witness, please?

18 Q. Sir, I want to ask you some questions about the intercept
19 of wireless telephone calls. Do you recognize the document
01:08 20 that appears on your screen?

21 A. Yes, I do.

22 Q. This document?

23 A. Yes, sir, I do.

24 Q. What is it?

25 A. This would be a good example of how a wireless CALEA

1 intercept would be done. And CALEA is known as a

2 Communications Assistance to Law Enforcement Act intercept.

3 Q. And that's a congressional act that you're referring to?

4 A. No, it's the Communications Assistance to Law Enforcement
5 Act.

6 Q. The act, it's a congressional act, correct?

7 A. Yes, sir.

8 Q. And is this an accurate representation of the process the
9 FBI uses to intercept cellular telephone calls?

01:09 10 A. Yes, sir, it is.

11 Q. Will this chart help you explain your testimony?

12 A. Yes, sir, it will.

13 MR. GROHARING: Your Honor, I would ask that the
14 exhibit be admitted, page 2 specifically of this exhibit, and
15 that it be published to the jury.

16 MR. CARNEY: No objection, your Honor.

17 THE CLERK: Counsel, what's the number?

18 MR. GROHARING: I'm sorry. 298.

19 THE COURT: It's a two-page document?

01:09 20 MR. GROHARING: I believe it's a four-page document.

21 I only want page 2 admitted and displayed to the jury. We
22 won't be using the other three pages.

23 THE COURT: Okay. So it's a one-page document? All
24 right.

25 MR. CARNEY: No objection.

1 THE COURT: Without objection?

2 MR. CARNEY: Without.

3 (Government Exhibit No. 298 received into evidence.)

4 BY MR. GROHARING:

5 Q. Special Agent Via, would you please explain to the jury
6 what procedures the FBI follows once a valid court order is
7 entered to intercept wireless telephone communications?

8 A. Yes, sir. In this particular diagram, I would ask you to
9 look to the far right where it says "FBI office." It's
01:10 10 important to understand that we have technically trained agents
11 in each one of the field offices that will work with the FISA
12 equipment once the court order has been provisioned by the
13 telephone company. So I work in the Operation Technology
14 Division which is located in Quantico, Virginia. So it's
15 important to understand that the field office plays a big role
16 in this.

17 If you go down to the lower right side where it says
18 "carrier provisioning function," in a CALEA-type intercept, the
19 telephone company would do all the provisioning -- or we call
01:11 20 it setup -- of the actual court order. All of that is done by
21 the carrier. So you see the person sitting there at a monitor,
22 sits with a sole monitor with technology today, that person can
23 provision that line sitting right at a terminal.

24 The telephone switch company is in the middle which that
25 box would rise back up to. In a CALEA-type intercept, the

1 intercept is done in two parts. If you see the dotted line, it
2 says "call content channel." That's a telephone term. "Call
3 content" is the actual audio that you would be hearing in a
4 full-blown FISA case. The yellow dotted line above it says
5 "call data channel." That's the actual digits that are dialed.
6 Those digits could be incoming or outgoing. That information
7 would control the start time of the call, the end time of the
8 call, and then the duration of the call.

9 Q. And this information that's collected, the call data and
01:12 10 the call content, where does it go?

11 A. Okay. The call data, part of the two parts, that data
12 would go to my unit at Quantico. And we have a server farm
13 right inside of our labs. Once that data reaches Quantico, we
14 have our own internal network that we would go out to all of
15 the field offices that have the collection equipment.

16 Internally we program -- we're able to use software so
17 that the data will know what field office to go to and also
18 what port it would go to once it landed to the field office.
19 So the data comes from the telephone company to Quantico, and
01:13 20 at Quantico we have a network where we send it out to the field
21 office.

22 On the other hand, the audio, or the call content channel,
23 it will go directly to the field office from the closest
24 central office. That could be done through a dedicated circuit
25 or that could be done through what is known as a ring-down

1 line. Whenever the person of interest goes off-hook or raises
2 his telephone receiver, it would ring down to the switch at the
3 field office. The data and the audio are mixed together and
4 it's delivered to the linguist or the case agent. And that
5 person would hear both parts of the conversation.

6 Q. And how does a linguist or a case agent review those
7 materials?

8 A. They would be inside of a room, and they would only have
9 privileges for the certain case that they're working. And when
01:14 10 the phone goes off-hook, the equipment automatically cuts on
11 and they're able to listen to that audio and view from a screen
12 the information called the data: meaning the time of the call,
13 the duration of the call, and how long the call actually was.

14 Q. And what is the name of the system that they would review
15 that material on?

16 A. The system is known as the Red Wolf Digital Collection
17 System.

18 Q. Is there also a system called the Red Tiger System?

19 A. That version is a newer system, but it was not there
01:14 20 during 2006, is when this case --

21 Q. Is it fair to say in 2006 someone would have reviewed
22 these materials with Red Wolf; in 2011 they would now use Red
23 Tiger?

24 A. Yes, sir.

25 Q. How is this information stored on the Red Wolf System?

1 A. On the Red Wolf System we have what is known as "magneto
2 optical disk." It's a disk that has a -- basically a CD inside
3 of it, but encased in a protective cover. And those disks are
4 imported into what is known as a jukebox. And that disk would
5 be assigned by an administrator to that particular case.

6 Q. How long would the material remain on that Red Wolf
7 System?

8 A. Okay. That audio and data can stay on the system based on
9 what is agreed upon from the case agent and the administrator,
01:15 10 the administrator of the system. Basically, we will allow the
11 audio and data to stay on the system three months, or 90 days,
12 after it has been put on an MO, or magneto optical disk.

13 Also, it's important to say that if a -- we can check
14 boxes on the Red Wolf System, that if an audio session or a
15 phone call had not been reviewed, it could be checked as
16 unreviewed. So when 90 days would go by, the audio and data
17 that would drop off the system would be the information that
18 has already been previewed or marked as being non-pertinent.

19 So what has not been reviewed would be the last part that
01:16 20 would fall off the system; however, please understand that it's
21 all captured on the magneto optical disk, so no audio or data
22 is ever lost.

23 Q. So after the 90-day period, then, where does that
24 information go?

25 A. If it's on the system, it just is deleted.

1 Q. Is it -- you mentioned before it was saved on magneto
2 optical disk?

3 A. Yes, it is.

4 Q. At that point what is done with those disks?

5 A. Okay. The magneto optical disk, once it's full, the
6 system would notify the administrator that the tape is full.
7 At that time the case agent or his designee would come to the
8 central monitoring plant, would pull that MO off the system,
9 would put it in an evidence envelope and take it down to the
01:17 10 evidence for storage.

11 Q. You mentioned earlier that, then, with the Red Wolf
12 System, an agent or linguist is able to review the calls. Are
13 they able to manipulate particular calls or data on that
14 system?

15 A. No, they're not. If they are reviewing the audio or the
16 data, they are doing it from a separate room. The system is
17 locked down away from anyone else other than the
18 administrators. So they would be in a room set aside for that
19 particular case, and they would only have privileges to review
01:18 20 and also decide which sessions they want to put on a CD to
21 listen to later, but not manipulate the system.

22 Q. What procedures are used to ensure that these systems are
23 working properly?

24 A. From the start, again, I would share with you that the
25 telephone company does all the provisioning, so they would be

1 the first step. But we continue to work with the couriers
2 throughout the year. And everything is already prewired. So
3 this has been done since 1994. So we have that in place, that
4 once the provision is done, we can test continually with the
5 telephone company to make sure that everything is working.

6 We have a 24-7 helpdesk that can monitor the system. We
7 have electronic equipment in the central monitoring plant to
8 watch the heat, to watch the electricity, and also to watch the
9 cards on the system to ensure they're working properly. And if
01:19 10 we get what we consider to be a red light, then something could
11 be going on in a field office where we would notify them from
12 Quantico to go check a part of the system.

13 Q. Throughout your career are you aware of any instances when
14 data or content of these captured calls pursuant to a FISA
15 authorization have been manipulated?

16 A. No, I have not.

17 MR. GROHARING: That's all I have, your Honor.

18 MR. CARNEY: A man has to know his limitations. I
19 have no questions.

01:19 20 THE COURT: Thank you, Mr. Via. You may step down.

21 THE WITNESS: Thank you.

22 (The witness is excused.)

23 MR. AUERHAHN: Meredith D. Sparano.

24 MEREDITH SPARANO, duly sworn

25 THE CLERK: Please be seated. State your name and

1 spell your last name for the record.

2 THE WITNESS: Meredith Diana Sparano, S-P-A-R-A-N-O.

3 DIRECT EXAMINATION

4 BY MR. AUERHAHN:

5 Q. Good morning, ma'am.

6 A. Good morning.

7 Q. How are you employed?

8 A. I am employed with the Federal Bureau of Investigation.

9 Q. In what capacity?

01:21 10 A. I work in the ELSUR Unit, which is electronic
11 surveillance, as an ELSUR operations technician.

12 Q. How long have you been so employed?

13 A. I've been employed for two years and a little over seven
14 months.

15 Q. Could you generally describe your duties as the ELSUR
16 clerk?

17 A. I ensure the proper handling and storage of all ELSUR
18 media that comes in for the Boston division.

19 Q. And maybe a little bit more detail can describe what that
01:21 20 entails?

21 A. Sure. Agents bring in evidence that they have collected
22 in the ELSUR capacity and they release the custody to us. We
23 make sure that the chain of custody has been signed as
24 collected and then released to an ELSUR tech, and from there we
25 enter it into our automatic case support system, which is a

1 digital backup for the chain of custody in which we issue it a
2 1D number to be specific with that bar code, and then we store
3 it in our ELSUR vault.

4 Q. So let's break it down a little. First of all, when you
5 talk about "ELSUR," you said that means electronic
6 surveillance?

7 A. That's correct.

8 Q. Is it both electronic surveillance that's generated as a
9 result of consensual recordings where someone consents to be
01:22 10 recorded as well as court-authorized?

11 A. That is correct. We accept both consensual monitorings
12 and court-authorized media.

13 Q. And do you receive -- does the chain of custody begin with
14 the agent who takes custody of the original tape-recording, if
15 we're talking about a tape?

16 A. Yes. Every piece of evidence is entered on a 504B
17 envelope which has two sides of a chain of custody: One is
18 where it was collected, which the agent signs, and the date in
19 which it was collected; and then on the other side the agent
01:22 20 releases it to the ELSUR tech. Upon releasing it, we write
21 down the date and time in which they give it to us, so those
22 times should be the exact date and time. And then when we
23 store it we put that date and time.

24 Q. Okay.

25 MR. AUERHAHN: May I approach, your Honor?

1 THE COURT: You may.

2 BY MR. AUERHAHN:

3 Q. I'm going to place in front of you --

4 MR. AUERHAHN: For the record, I'll identify them as
5 1D34.

6 Q. Is that correct?

7 A. Yes.

8 Q. 1D35?

9 A. Yes.

01:23 10 Q. 1D58?

11 A. Yup.

12 Q. 1D63, 1D8 and -9. Did I read that correctly?

13 A. -8, -9, -63. Yes.

14 Q. Okay. And these are each the custody envelopes that you
15 just described?

16 A. Yes, they're each the 504B envelope.

17 Q. Okay. And there's a top half of the form, and that's the
18 part that's filled out by the agent?

19 A. Yes. The ELSUR tech is able to assist the agent if they
01:23 20 are unaware of how to fill it out, but the agent does that upon
21 collecting the evidence.

22 Q. And when the original agent relinquished custody, is there
23 a notation on the front of the envelope?

24 A. Yes. There's an "accepted custody" column on the left and
25 "release custody." When they accept it, they sign their name

1 and the date, and then when they release it, they sign the
2 right-hand side, in which the ELSUR tech underneath signs when
3 they received the evidence and puts "evidence control," and
4 then they store it in their release custody side.

5 Q. And do you always receive these envelopes directly from a
6 human being?

7 A. Not always. The Boston division has resident agencies in
8 New Hampshire, Maine, Rhode Island, as well as Massachusetts,
9 so those would be sent via FedEx. Upon release and custody the
01:24 10 agent would say "FedEx," so... In the reasoning, they would
11 say "to ELSUR" and include the FedEx number. Upon receiving
12 it, which will usually be the day later, or the Monday after
13 the Friday if they send it on a Friday, we also put the FedEx
14 number to track that it was being sent through that same
15 number. And then we will accept it when we receive it in our
16 mail collection that day.

17 Q. Okay. And as a matter of fact, one of those custody
18 envelopes, does it indicate -- or actually three of them,
19 indicate that they went through FedEx?

01:25 20 MR. AUERHAHN: If I may approach?

21 THE COURT: Go ahead.

22 THE WITNESS: Yes. 1D34 and -35 were sent to be
23 enhanced, which is the 1D58 copy, and so those include the
24 FedEx number in the chain of custody.

25 BY MR. AUERHAHN:

1 Q. Okay. And when received either the original chain of
2 custody or the return from the enhancement, what do you do with
3 the contents and the envelope?

4 A. We make sure that the evidence has been resealed. That
5 date and time should correlate when the agent either returns it
6 to us or the ELSUR tech can seal it and sign it. So that date
7 and time should correlate with the same day that -- we then
8 update the chain of custody in or ACS company and then restore
9 it in our ELSUR vault.

01:26 10 Q. Okay. When you say restore it in your ELSUR vault,
11 without too much detail, what do you mean by that?

12 A. We have two rooms in our ELSUR vault: one for secret,
13 classified evidence, and the other for unclas-. The vault is
14 secured with an alarm, a spin-dial lock, and then a key for
15 those of us with restricted access.

16 Q. And if an agent needs to review the material, wants the
17 custody back or, for example, released to court here, is it
18 self-service or do you have to get the --

19 A. No, only those with restricted access. So either myself
01:26 20 or the other EOT will take the request from the agent, and then
21 we will enter the vault and bring out the piece of evidence.
22 We will sign the chain as we took control of the evidence and
23 then release it to the agent, and then the agent will then sign
24 there in person that they maintained custody of it.

25 Q. Okay. And you mentioned a backup ACS system. What is

1 that?

2 A. The ACS system is an automated case support system in
3 which when we receive any piece of evidence we enter, based on
4 the case, that we collected an item. Upon doing that, it
5 automatically updates the next 1D number, which correlates to
6 the bar code that we assign each piece. And in writing a
7 little description, we also update the chain of custody so that
8 it matches each 504B envelope.

9 MR. AUERHAHN: That's all, your Honor.

01:27 10 CROSS-EXAMINATION

11 BY MS. BASSIL:

12 Q. Good morning.

13 A. Good morning.

14 Q. I just wanted to ask you a couple of questions. I was
15 unclear about -- you keep using the name ELSUR?

16 A. ELSUR, E- --

17 Q. ELSUR. And those are E-L-S-U-R?

18 A. That's correct.

19 Q. What does that stand for?

01:28 20 A. Electronic surveillance.

21 Q. Okay. So the E-L is "electronic" and then S-U-R is
22 "surveillance"?

23 A. That's correct.

24 Q. And you mentioned the phrase EOT. You and another EOT?

25 A. It's an ELSUR operations technician.

1 Q. Okay. And I had a question. You said that as things come
2 in, there is a bar code put on it so it matches to a particular
3 case?

4 A. The bar code -- we have spare bar codes. We put the bar
5 code on each 504B envelope. That bar code correlates to the 1D
6 number which is specific to that case to which the evidence
7 pertains.

8 Q. All right. And did you receive any other envelopes in
9 this case?

01:28 10 A. How do you mean?

11 Q. Well, you have a number of envelopes there in front of
12 you. Were there other ones in this case?

13 A. Yes, that's correct.

14 Q. All right.

15 MS. BASSIL: I have no further questions.

16 MR. AUERHAHN: Your Honor, actually, if I could go
17 beyond the scope of cross because I've been informed that we
18 overlooked one.

19 MS. BASSIL: Okay.

01:29 20 MR. AUERHAHN: May I approach, your Honor?

21 THE COURT: Go ahead.

22 REDIRECT EXAMINATION

23 BY MR. AUERHAHN:

24 Q. If I can show you 1D106, can you also tell me what that
25 is?

1 A. That was the last piece of evidence that was entered for
2 this case.

3 Q. All right. And is that chain-of-custody envelope similar
4 to the ones you've just described?

5 A. Yes; it is a 504B envelope.

6 Q. Okay. And does it describe what it is?

7 A. It gives a range of intercept dates for court-authorized
8 intercepts listing the subject's name and the intercept date.

9 Q. Okay. And these three that you identified previously, do
01:29 10 these contain MOU disks, also range of dates?

11 A. Yes, they do. They are -- "FISA" is labeled on the 504B
12 envelope.

13 MR. AUERHAHN: Thank you, your Honor.

14 Thank you, Ms. Bassil.

15 THE COURT: Anything else?

16 MS. BASSIL: No further questions.

17 THE COURT: All right. Thank you, Ms. Sparano. You
18 may step down.

19 THE WITNESS: Okay. Thank you.

01:30 20 (The witness is excused.)

21 MR. CHAKRAVARTY: Robert Gemme.

22 ROBERT GEMME, duly sworn

23 DIRECT EXAMINATION

24 BY MR. CHAKRAVARTY:

25 Q. Good morning.

1 A. Good morning.

2 Q. Can you please state where you work.

3 A. I work for the Federal Bureau of Investigation.

4 Q. And you go by Robert Gemme?

5 A. Yes.

6 Q. In what capacity are you employed at the FBI?

7 A. I'm an evidence technician.

8 Q. In which field office?

9 A. The Boston field office.

01:32 10 Q. How long have you done that?

11 A. 22 and a half years, approximately.

12 Q. What did you do before that?

13 A. I was newly hired in 1989, worked at the mail desk for six
14 months, and then I became an evidence technician.

15 Q. Okay. Are you familiar with the electronic surveillance
16 custody-and-handling procedures?

17 A. Not really, no.

18 Q. So is evidence treated differently than electronic
19 surveillance?

01:32 20 A. With the chain-of-custody issues, no.

21 Q. So in what capacity -- what ways do they differ?

22 A. It's basically the paperwork to enter the electronic
23 evidence into storage, into evidence.

24 Q. Okay. So when you say "paperwork," is it specifically the
25 forms are different?

1 A. Yes. Yes. Some of the forms, not all of them.

2 Q. But the process for handling and storage is essentially
3 the same?

4 A. Essentially, yes.

5 Q. Can you just give an overview of what that
6 evidence-control process is for the jury?

7 A. When we get evidence, basically what happens is the
8 evidence is entered onto an FD192, which is a control sheet,
9 and I enter it into the computer after verifying what they have
01:33 10 on the sheet is exactly what they're putting in. And then it
11 receives a bar code number which stays with that piece of
12 evidence through the life of the evidence. And then once all
13 the paperwork is done, it is stored in the evidence-control
14 room until someone comes to get it for review or disposition.

15 Q. And then what happens when somebody needs to check
16 something out of evidence?

17 A. I relinquish it to them on the chain of custody, and they
18 accept it also on the chain of custody at the same time. Also,
19 the ACS, which is the evidence-control database, is updated to
01:34 20 reflect the same time as the chain of custody.

21 Q. When evidence is brought to you, what happens for the
22 first item to be checked in?

23 A. It is checked in, and once it receives the bar code and
24 the chain of custody is signed by me indicating for storage, it
25 is placed in the evidence-control room until, like I said,

1 further review or someone needs it for court or something like
2 that.

3 Q. Who has access to the evidence-control room?

4 A. There are two evidence-control technicians and three
5 alternates, and those are the only people that have access.

6 Q. What types of materials get put into evidence? Obviously,
7 the universe of FBI investigations is broad, but in terms of
8 physically what types of things go in there?

9 A. It could be anything except for electronic surveillance
01:35 10 tapes and stuff. We get everything else but that.

11 Q. Are you familiar with -- what is the evidence numbering
12 convention in the evidence-control room?

13 A. The 1B numbers --

14 Q. Yes.

15 A. -- you're referring to?

16 Once a piece of evidence comes in, it receives a 1B
17 number. That is basically just the identifier for the evidence
18 system. And as an additional piece of evidence comes in, it
19 gets the next 1B number, so they are consecutive. And that's
01:35 20 throughout the bureau.

21 Q. Okay. So does each case have their own series of 1B
22 numbers?

23 A. Yes.

24 Q. And that's in addition to the bar code that you mentioned?

25 A. Correct.

1 Q. Do you know what 1B signifies, like the B --

2 A. No. No. We have different signifiers. 1As, 1Bs, 1Cs and
3 1Ds is the ELSUR.

4 Q. So it's the electronic --

5 A. Exactly.

6 Q. So with regard to this case, were there several items of
7 evidence which were checked out of evidence for purposes of
8 this trial?

9 A. Yes.

01:36 10 Q. I'm going to direct your attention to the box to your
11 right, and I'm going to ask you, if you wouldn't mind, going
12 through each one of those and pulling out those pieces of
13 evidence that you had custody of in the evidence-control room.

14 MR. CHAKRAVARTY: While he's doing that, your Honor,
15 may I approach with two others?

16 THE COURT: Go ahead.

17 (Pause.)

18 BY MR. CHAKRAVARTY:

19 Q. Mr. Gemme, just for purposes of the record, those items
01:37 20 that you took out of that box, were those all at the FBI
21 field -- Boston field division's evidence-control room?

22 A. Yes.

23 Q. How do you know that?

24 A. By the 1B number, and also by the bar code number and the
25 file number.

1 Q. All right. And were those checked out for purposes of
2 this case?

3 A. Yes.

4 Q. Can you just -- for the purposes of the record, just go
5 through and read each of those 1B numbers into the record?

6 A. This is 1B61. Would you like me to state the file number
7 also or --

8 Q. No, that's fine.

9 A. 1B61, 1B2, 1B1, 1B4, 1B71, 1B59, 1B29, 1B72, 1B20, 1B16,
01:38 10 1B66, and 1B1. This is from a Washington field case.

11 Q. So let me stop you there. Is it common that evidence is
12 sent from one field division to another field division?

13 A. Yes.

14 Q. And how is it usually sent?

15 A. It is usually sent via FedEx, and also -- and when it is
16 sent, it is transferred through the computer system and
17 accepted in the field division that is receiving it to show
18 that the evidence was transferred, and it also is also
19 transferred on the manual chain of custody.

01:39 20 Q. So that piece of evidence, the 1B1 that you just mentioned
21 from the Washington field division, did that follow that
22 procedure that you just described?

23 A. Yes.

24 Q. Okay. So it's temporarily in the custody of the Boston
25 field division?

1 A. Correct. Correct.

2 Q. Continue.

3 A. And also, 1B37.

4 MR. CHAKRAVARTY: Thank you, Mr. Gemme.

5 THE COURT: You're welcome.

6 MS. PATEL: No questions, your Honor.

7 THE COURT: All right, Mr. Gemme. Thank you. You may
8 step down.

9 THE WITNESS: Thank you.

01:40 10 (The witness is excused.)

11 MR. CHAKRAVARTY: Your Honor, the next witness is
12 Agent Greg Hughes. And there may be some items -- and I don't
13 know. We had some discussion with my brothers and sisters as
14 to whether there are going to be any issues we should raise
15 before he testifies.

16 MR. CARNEY: I think that would be useful, your Honor,
17 please.

18 THE COURT: All right. Why don't we excuse the jury
19 for a minute and we'll talk about those.

01:40 20 THE CLERK: All rise for the jury.

21 (The jury exits the courtroom at 10:24 a.m.)

22 THE COURT: You may be seated.

23 MR. CARNEY: If I may just have one moment to see if
24 we could resolve it?

25 (Counsel confer off the record.)

1 THE COURT: If this is going to take a while, maybe we
2 should take a break.

3 MR. CARNEY: We're this close. Honestly.

4 THE COURT: All right.

5 MR. AUERHAHN: I think we can say we're ready.

6 MR. CARNEY: Your Honor, the matter that we requested
7 some time on, we have now resolved. Prior to this witness, we
8 were going to interpose some objections to the admissibility of
9 certain documents. We're prepared to alert your Honor as to
01:46 10 what those objections are before the witness comes out, and
11 that way, if your Honor rules, our objections will be noted if
12 you overrule them; if they're sustained, the government will
13 know not to offer the documents.

14 THE COURT: Okay. I'm not sure I entirely follow
15 that. This fellow is from Yahoo?

16 MR. CHAKRAVARTY: No, your Honor. This is an FBI
17 agent who extracted from a variety of different sources of
18 evidence.

19 So the preview to your Honor, though, is all of the
01:46 20 FBI kind of interception techniques and the other things that
21 we've heard about the last few days, this witness is going to
22 describe all of those being extracted, and then we'll offer
23 those into evidence. So to the extent that there's relevancy
24 and 403-type concerns, I suspect that defense has objections
25 with regards to that.

1 THE COURT: Well, this is like the one issue we had
2 the other day which is when there's a batch offer, in a sense.

3 MS. BASSIL: Right.

4 THE COURT: And thinking back on that, and it may
5 apply to this as well, it seems to me there's a kind of
6 two-step process between 402 and 403. The proponent has the
7 obligation to satisfy 402 by showing that there's enough
8 relevance for admissibility. Then I think it's the opponent
9 who has the obligation under 403 to show why, notwithstanding
01:47 10 its relevancy, it should be excluded.

11 MS. BASSIL: Well, if I could --

12 THE COURT: And so that's the general framework.

13 Then it becomes an efficiency conduct-of-trial issue
14 as to how to make those assessments which may vary within the
15 batch.

16 MR. CARNEY: Yes.

17 MS. BASSIL: That's correct.

18 THE COURT: The thought I had with respect to the
19 other matters, which I think were mostly photographs which we
01:47 20 kind of put aside because of other matters, was that we could
21 figure out some out-of-session way for me to review that with
22 the objections. And that would probably take some time, given
23 the volume, but that if there were an exhibit that somebody
24 wanted to show during examination to the jury, we could
25 consider those -- I was assuming for these thoughts that that

1 would be a smaller number, and we might be able to just do that
2 as we went along. Now, I don't know whether that rubric would
3 apply here as well.

4 MR. CARNEY: Your Honor, that process is entirely
5 acceptable to us. There might even be -- I'm sorry.

6 MR. CHAKRAVARTY: I'm sorry. No. This witness is not
7 expected to publish any of these materials to the jury at this
8 point.

9 MS. BASSIL: So we have sort of a general objection,
01:48 10 which I could make now, about the slew of instant messages that
11 they're going to use. But as to more specific objections, we
12 can give those to you at a later time and give them to you as a
13 group or a list.

14 THE COURT: Yes. I think it will be necessary
15 because --

16 MS. BASSIL: Yes.

17 THE COURT: Well, let me just leave it at that. I
18 think it will be necessary to do that because I think the 403
19 kinds of objections are more likely to be particular whereas it
01:49 20 may be that the relevance threshold may be more general. And
21 so that it may be easier to talk about a group in 402 terms,
22 but you have to talk about individuals in 403 terms. And
23 that's the difference.

24 MS. BASSIL: Correct. Some things are a group and
25 some things are very specific.

1 THE COURT: Right.

2 MR. CARNEY: Your Honor, I think the record is clear
3 that even if you put in -- or overrule our initial objection so
4 that the exhibits are admitted, we have preserved our right to
5 revisit the issue with your Honor to focus on individual
6 exhibits. And since the government has informed me that they
7 don't intend to publish the content of these exhibits to the
8 jury, I believe we're going to be able to move quite quickly
9 through this.

01:50 10 MR. CHAKRAVARTY: Your Honor, there is one exception.
11 With regard to the stored instant messages communications,
12 Mr. Hughes would describe one of them and how he compared them
13 to what was on the computer and how he extracted it.

14 MR. CARNEY: Mr. Groharing...

15 MR. CHAKRAVARTY: The other aspects of this, which
16 hopefully it will streamline it, and we regret we weren't able
17 to arrive at some type of agreement before trial, but the
18 government, in principle, has no objection to the
19 authentication of additional stored communications which the
01:50 20 government is not introducing but were collected from the same
21 source; however, we need to deal with each of those like we're
22 dealing with the government's exhibits because amongst other
23 reasons, those were not finalized in terms of translations. So
24 we would have to, you know, re-check each of the ones that the
25 defense was --

1 THE COURT: What's the number of those, do you know?

2 MS. BASSIL: Well, for example, your Honor, what I've
3 done is -- so, for example, the first civilian witness that I'm
4 going to cross-examine, I went through the exhibits that the
5 government was going to use in terms of instant messages, and I
6 have, I think -- I have 11 additional instant messages.

7 THE COURT: That's manageable.

8 MS. BASSIL: Okay. And I used -- you have to
9 understand there were two versions of these instant messages.
01:51 10 So these correspond to the very last version which included
11 translations, all right?

12 And then the other issue was -- and I don't know
13 whether we can take this as each one comes up or not, but in
14 our exhibits that we had sent in ahead of time, all right,
15 there are -- as I call these in a group, there are a number of
16 instant messages; there are four transcripts and telephone
17 calls the government gave us from a witness who is in prison
18 and they recorded his prison phone calls; and then the third
19 group are emails which also the government -- these are
01:52 20 everything the government gave us. These are not sources that
21 we carved out or we found.

22 THE COURT: Okay. So --

23 MR. CARNEY: The issue that Mr. Chakravarty raised has
24 been satisfied to our satisfaction.

25 THE COURT: Okay.

1 MS. BASSIL: And I will give them the ones we're going
2 to use.

3 THE COURT: But that's not for a while anyway.

4 MS. BASSIL: Yeah. Well, it's coming up --

5 THE COURT: Let me just understand, so Mr. Hughes is
6 going to put in a bunch subject to the procedure we've talked
7 about. The list that I have now, the linguists are next?

8 MR. CHAKRAVARTY: Yes, your Honor.

9 THE COURT: Is that going to bring us to the summary
01:52 10 issue that the defendants have briefed?

11 MR. CHAKRAVARTY: It will in part.

12 MS. BASSIL: Yes.

13 MR. CHAKRAVARTY: We've taken some of the issue off of
14 the table in order to expedite today's session, understanding
15 that the linguist will be recalled at some later date when your
16 Honor has come --

17 THE COURT: I haven't had anything from the government
18 yet, that's why -- at some point we'll have to have an argument
19 about those --

01:53 20 MR. CHAKRAVARTY: For purposes of today, largely they
21 will be authenticating what they did -- verbatim translations
22 without reading from those. But there will be about -- for
23 each of them about eight exhibits which they -- the summary
24 translations were prepared but we're not going to be preparing
25 those into evidence, but they will be describing what those

1 substances were.

2 THE COURT: Fine. Fine.

3 MR. CARNEY: Excuse me.

4 (Counsel confer off the record.)

5 MR. CARNEY: We're all set, your Honor. Thank you.

6 THE COURT: Now, just to be clear, we have sort of a
7 scrivener's problem with respect to these batches, whether
8 to -- because of our system here things get entered as admitted
9 or not. I guess my thought was -- and this is what I was
01:54 10 saying the other day, was that they could be provisionally
11 admitted subject to reevaluation on 403 grounds, the thought
12 being that once you pass 402 -- so if that's the case, then the
13 clerk will enter them, but that's a reversible process in the
14 system and we can take them out as appropriate.

15 MS. BASSIL: I have a suggestion, your Honor.

16 THE COURT: We want to be sure that the accounting is
17 done well.

18 MS. BASSIL: Right. Perhaps we could take a Friday
19 afternoon after the jury leaves -- not this Friday, but -- and
01:55 20 next Friday's a holiday -- but take a Friday after they leave
21 and just do that, go through them.

22 THE COURT: Well, no. He'll do it contemporaneously
23 because there's actually time-stamping.

24 MS. BASSIL: I know I'm not supposed to give away his
25 Friday afternoons. I'm sorry.

1 THE COURT: There's time-stamping anyway, so I think
2 we'll have to do it -- and I don't want to lose the accounting.

3 MR. CARNEY: It's necessary for both defense counsel
4 to consult before next Friday.

5 THE COURT: Let's get the jury.

6 MR. CARNEY: Can I bring up one issue?

7 THE COURT: Oh, with him?

8 MR. CARNEY: There was a document marked yesterday,
9 and I take -- I just want to make clear that that document came
01:55 10 into evidence.

11 MS. BASSIL: It was an exhibit. And then we can
12 discuss --

13 THE COURT: Well, yeah. Let me find it.

14 MR. CARNEY: It might be 1076, your Honor.

15 THE CLERK: 1075 is the one that -- I think you had
16 mentioned yesterday.

17 MS. BASSIL: 1075. It should be a post from the
18 Tibyan Publications, I believe.

19 THE COURT: Yes, 1075 is in evidence. You then had
01:56 20 some others you wanted to get in and I think I excluded, and I
21 thought you were going to mark those for identification.

22 MS. BASSIL: Oh, all right. I misunderstood. I
23 marked them as exhibits with the idea they might get excluded
24 later.

25 THE COURT: No, I think I excluded them at the side,

1 but I suggested they be marked for identification, so those...

2 MS. BASSIL: We could redo that. We'll fix that.

3 THE COURT: I don't know, that was four, five
4 documents, something like that. We just need the sequence, 76,
5 77, 78.

6 MS. BASSIL: It was things they gave us; it's just the
7 form was different based on the disk.

8 THE COURT: Anyway, those should be marked for
9 identification. And then the next admitted number that's an
01:56 10 add-on should follow those.

11 MS. BASSIL: Fine.

12 THE COURT: All right.

13 MR. GROHARING: Your Honor, we prepared lists of the
14 exhibits that Special Agent Hughes will be offered.

15 THE COURT: Paul, you go. You go.

16 MR. GROHARING: It might be helpful just to have those
17 marked as exhibits not for the jury but for the Court. What
18 we're going to do is have Special Agent Hughes look at the
19 list, confirm that the items on the list came from a particular
01:57 20 location, and authenticate the individual piece of evidence
21 that way.

22 THE COURT: Well, it sounds like a summary. It might
23 be admitted as a summary.

24 MR. GROHARING: We could admit it the same way.

25 MS. BASSIL: It would be confusion, your Honor,

1 frankly, because it's only some exhibits but not others, I
2 think, to admit it.

3 THE COURT: Well, for the time being we could mark it
4 for identification as the next available government number.

5 MR. CHAKRAVARTY: Yes.

6 THE COURT: Wherever that left off.

7 MR. GROHARING: Is it the Court's preference if I list
8 on the record the individual exhibits or just provide this
9 exhibit, if that makes sense?

01:57 10 THE COURT: As they're offered, you mean? I don't
11 think we have to go through a hundred exhibits by name.

12 MS. BASSIL: Why don't we mark that -- I would suggest
13 marking it for identification just because I think it could be
14 confusing to the jury because it's not going to be every
15 exhibit.

16 THE COURT: I don't know whether it will or won't.
17 But, yeah, we'll mark it for the next -- so what is the next
18 government's number?

19 MR. CHAKRAVARTY: 794.

01:58 20 MS. BASSIL: These are already exhibits, your Honor, I
21 believe. These aren't new. These are already exhibits.

22 MR. CHAKRAVARTY: The communications are exhibits, but
23 the chart from the exhibit list are extractions. 794 would be
24 the first one.

25 THE COURT: Okay. We're ready for the jury.

1 THE CLERK: All rise for the jury.

2 (The jury enters the courtroom at 10:42 a.m.)

3 THE CLERK: Please be seated.

4 THE COURT: Jurors, thanks for your patience. We've
5 solved a couple of things.

6 Just for the record, now, we'll mark for
7 identification government's 794, which is a list.

8 (Government Exhibit No. 794 marked for
9 identification.)

01:59 10 MR. GROHARING: Your Honor, we call Greg Hughes.

11 GREGORY HUGHES, duly sworn

12 THE CLERK: Please be seated. State your name, and
13 spell your last name for the record.

14 THE WITNESS: Gregory Hughes, H-U-G-H-E-S.

15 THE COURT: Okay, Mr. Groharing, before you begin, do
16 you have an extra copy of that 794 which I could have?

17 MR. GROHARING: I do, your Honor.

18 (Pause.)

19 MR. GROHARING: There are actually five separate
02:01 20 exhibits, your Honor, by the different categories of
21 information.

22 THE COURT: Marked as one for identification?

23 MR. CARNEY: Yes, your Honor.

24 THE COURT: Five lists?

25 MR. GROHARING: Yes, your Honor.

1 THE COURT: Five lists, one exhibit?

2 MR. CARNEY: I stapled mine together.

3 THE COURT: Yeah, okay. Thank you.

4 DIRECT EXAMINATION

5 BY MR. GROHARING:

6 Q. Good morning, Special Agent Hughes.

7 A. Good morning.

8 Q. What do you do for a living?

9 A. I'm a special agent with the Federal Bureau of
02:02 10 Investigation.

11 Q. And how long have you been with the FBI?

12 A. A little less than ten years.

13 Q. What is your current position?

14 A. Currently I'm assigned to the Joint Terrorism Task Force
15 conducting international terrorism investigations.

16 Q. And how long have you been with the Boston Field Office?

17 A. In total, a little less than ten years. I did have
18 another assignment for about two years of that time down
19 in -- as a supervisory special agent assigned to our
02:02 20 counterterrorism division at FBI headquarters in Washington,
21 D.C.

22 Q. Throughout the course of your career, how many
23 investigations have you participated in?

24 A. Several dozen.

25 Q. And are you familiar with the investigation in this case?

1 A. Yes, I am.

2 Q. Have you had the opportunity to review certain materials
3 as a result of your involvement in this case?

4 A. Yes, I have.

5 Q. I want to ask you about, in particular, intercepted
6 emails. Are you familiar with the process that the FBI follows
7 to obtain authorization and to ultimately intercept emails and
8 review them?

9 A. Yes.

02:03 10 Q. From an agent at the JTTF's perspective, how does the FBI
11 do that and how do you ultimately review the materials?

12 A. An agent would submit an application to the court. And
13 once the court approves the warrant, certain technical
14 connections would be made and the intercepted emails would be
15 collected on a central storage system. We call it data
16 warehouse system, or DWS. And we would access those for
17 retrieval and review from our field office.

18 Q. I want to hand you what's been marked as -- the first two
19 pages of Government Exhibit 794.

02:04 20 A. (Nonverbal response.)

21 Q. Are you familiar with the documents that are contained on
22 that list?

23 A. Yes, I am.

24 Q. What are they?

25 A. These are emails that were intercepted that I reviewed on

1 the Data Warehouse System.

2 Q. How did you confirm that the emails on that list were
3 actually contained on the Data Warehouse System?

4 A. I reviewed each of the exhibit numbers and items for each
5 exhibit, and compared it to the items that matched it on DWS.
6 So I know that each of the items there were, in fact, the same
7 items on the Data Warehouse System.

8 MR. GROHARING: Your Honor, at this point I would ask
9 that the items contained on the first two pages of the exhibit
02:05 10 be admitted.

11 THE COURT: Subject to the procedure we discussed
12 during our recent conference.

13 MS. BASSIL: Fine.

14 MR. GROHARING: May I approach, your Honor?

15 THE COURT: You may.

16 MR. GROHARING: I have handed the witness the third
17 page of Exhibit 794.

18 BY MR. GROHARING:

19 Q. Do you recognize that document?

02:05 20 A. Yes, I do.

21 Q. What is that document?

22 A. These are listed items that I also viewed on the Data
23 Warehouse System. These are -- when the court authorizes the
24 FBI to intercept emails at the initial process, it goes in and
25 basically conducts a search of items that were already on the

1 computer. And these are emails that were present at the
2 initiation of the interception.

3 Q. And how did you confirm that those exhibits were on the
4 DWS system?

5 A. Through the same process. I opened each of these exhibit
6 items and compared it to the items on the DWS system.

7 MR. GROHARING: Your Honor, I would ask that these
8 items be admitted as well.

9 THE COURT: Subject to the same --

02:07 10 MS. BASSIL: The same here.

11 THE COURT: May I just be clear? These are matters
12 that were present on the target computer or something? He said
13 "present." I wasn't sure what "present" meant. Maybe you
14 could clarify.

15 BY MR. GROHARING:

16 Q. Special Agent Hughes, these particular emails that are on
17 that list, how did those come to be on the DWS system?

18 A. Sir, again, at the time that interception begins, it
19 takes -- the court authorizes a search, essentially, of
02:07 20 existing items, items that are already on the -- associated
21 with that account that are then collected as well and put onto
22 the system. So all those items throughout that process are
23 still stored on the DWS system.

24 Q. And those materials were provided by Yahoo, correct?

25 A. Yes.

1 Q. Special Agent Hughes, I want to ask you about a 2009
2 search warrant that was issued on Yahoo. Are you familiar with
3 that search warrant?

4 A. Yes, I am.

5 MR. GROHARING: Your Honor, could I please display the
6 Exhibit 739A for the witness?

7 THE COURT: All right.

8 BY MR. GROHARING:

9 Q. Special Agent Hughes, are you familiar with this document?

02:08 10 A. Yes.

11 Q. What is it?

12 A. This is a certification that the records provided by Yahoo
13 are correct and the actual records requested. So it's
14 basically a confirmation provided by Yahoo in the process.

15 Q. And this certification came from Yahoo in response to the
16 2009 search warrant you previously discussed?

17 A. Yes.

18 MR. GROHARING: Would you please display 739?

19 Q. Special Agent Hughes, are you familiar with the exhibit
02:09 20 that's currently on the screen in front of you?

21 A. Yes, I am.

22 Q. What is that?

23 A. This is another document that's provided by Yahoo in
24 conjunction with the search warrant. You could think of it as
25 a cover sheet to the records that were provided. It provides

1 subscriber information, IP addresses, information associated
2 with that log-in name.

3 Q. And based on that document, are you able to tell who the
4 owner of that account was?

5 A. Yes. It was Tarek Mehanna.

6 MR. GROHARING: Your Honor, I would ask that Exhibit
7 739 and 739A be admitted.

8 MS. BASSIL: No objection, your Honor.

9 THE COURT: All right. 739 and 739A.

02:10 10 (Government Exhibit Nos. 739A and 739 received into
11 evidence.)

12 MR. GROHARING: May I approach, your Honor?

13 THE COURT: You may.

14 MR. GROHARING: I've provided the witness the next
15 page of Exhibit 794.

16 THE COURT: Okay.

17 BY MR. GROHARING:

18 Q. Special Agent Hughes, do you recognize that document?

19 A. Yes, I do.

02:10 20 Q. What is it?

21 A. It's the exhibit list of the items that were collected
22 pursuant to the 2009 search warrant on Yahoo.

23 Q. Okay. And how did you determine that those items were, in
24 fact, taken from the return of that warrant?

25 A. So these items weren't stored. They came from a different

1 process so they weren't stored on the DWS system, but I
2 reviewed the items that were obtained through the search
3 warrant and compared it to the items presented on the exhibits
4 and made sure they were the same.

5 MR. GROHARING: May I approach, your Honor?

6 THE COURT: You may.

7 BY MR. GROHARING:

8 Q. Do you recognize that compact disk?

9 A. I do.

02:11 10 Q. What is it?

11 A. This is the -- items I used -- this is the item -- this
12 contains the items that I used to compare the items on the
13 exhibit list. So this is a collection of the items that were
14 taken in the 2009 Yahoo search provided by Yahoo. And it was
15 the point of comparison I used to make sure the exhibits
16 matched those items.

17 Q. And were you able to determine that the items that are on
18 the page of Exhibit 794 in front of you, in fact, came from
19 that disk?

02:12 20 A. Yes.

21 MR. GROHARING: Your Honor, I would also ask now that
22 those exhibits be admitted into evidence.

23 THE CLERK: What's the number?

24 THE COURT: Let me just see you at the side for a
25 minute. I'm not sure I'm following. Maybe my copy is...

1 (Discussion at sidebar and out of the hearing of the
2 jury:)

3 THE COURT: The fourth page. You just asked him
4 whether the fourth page was the product of a search. The
5 fourth page I have is intercepted telephone calls.

6 MR. GROHARING: It should be --

7 MS. BASSIL: It should be --

8 THE COURT: I don't have that one. So here's -- I
9 have 1 and 2. We just did those. That goes up to 297. And my
02:13 10 next page, it was emails. This is what he said was stored, I
11 guess, right, at the time they began the interception?

12 MR. GROHARING: You're missing the stored page, your
13 Honor. This is from Yahoo.

14 THE COURT: Okay.

15 MR. AUERHAHN: Maybe they're just out of order.

16 THE COURT: Yeah, I think there's just some other
17 order.

18 MS. BASSIL: That's the fourth page.

19 MR. GROHARING: FISA was the third page.

02:13 20 THE COURT: FISA was third and this is the fourth?
21 Okay. I don't have the FISA page.

22 MR. CHAKRAVARTY: Why don't you give him that?

23 THE COURT: Well, I don't need it right now. I will
24 need it, but now I'm with you.

25 So this is actually page 4, right? So...

1 MR. GROHARING: The Yahoo server is page 4.

2 (In open court:)

3 BY MR. GROHARING:

4 Q. So just to be clear, Special Agent Hughes, when you're
5 referring to items that were seized pursuant to a search
6 warrant, could you please list the exhibit on the top of that
7 page that you're referring to, the first exhibit?

8 A. Exhibit 390.

9 Q. And I believe that is page 4 of the exhibit, your Honor.

02:15 10 THE COURT: Yes.

11 MR. GROHARING: At this point, your Honor, I would ask
12 that the documents be admitted.

13 THE COURT: Yes, subject to the same rule.

14 (Government Exhibit No. 390 received into evidence.)

15 BY MR. GROHARING:

16 Q. Special Agent Hughes, are you also familiar with the
17 process the FBI uses to review telephone calls that are
18 intercepted pursuant to FISA authorization?

19 A. Yes, I am.

02:15 20 Q. And how does a local agent review those types of
21 intercepted calls?

22 A. The process is different than we would use for an
23 intercepted email, but essentially it starts off the same.
24 Agents apply for -- apply through the court; the court
25 authorizes the warrant. Once the warrant is approved,

1 technical connections are made and the intercepted telephone
2 calls are directed to a device at the field office as opposed
3 to a central repository with emails. And agents then retrieve
4 those phone calls for review at the field office.

5 MR. GROHARING: May I approach, your Honor?

6 THE COURT: You may.

7 MR. GROHARING: I've handed the witness what's been
8 marked as the fifth page in that Exhibit 794.

9 Q. Special Agent Hughes, do you recognize that exhibit?

02:16 10 A. Yes, I do.

11 Q. Could you please read from the top of that page and
12 describe it for the Court, please?

13 A. So this is a collection of -- this lists the exhibits of
14 intercepted telephone calls. It also lists the transcripts of
15 those telephone calls.

16 Q. And did you confirm that those telephone calls listed on
17 that document were, in fact, taken from the Red Wolf System you
18 previously described?

19 A. I did. I took it -- I went to that system, the telephone
02:17 20 collection platform, and created a CD of those telephone calls
21 which were then used to generate this exhibit list.

22 Q. And I've also handed you a CD. Is that the CD you just
23 referenced?

24 A. Yes. This is the CD I created.

25 Q. And did you then take those documents that are included as

1 exhibits and compare those calls to the calls on the Red Wolf
2 System to ensure they were the same?

3 A. Yes. So I compared -- I created this disk, which I
4 created from the Red Wolf System, which is the name we give to
5 the telephone collection platform. I compared the calls that
6 were presented as exhibits to the calls on the CD to ensure
7 that they were the same.

8 MR. GROHARING: Your Honor, I would ask that the list
9 of exhibits contained on page 5 of Exhibit 794 also be
02:18 10 admitted.

11 THE COURT: On the same condition.

12 BY MR. GROHARING:

13 Q. Special Agent Hughes, did you also review stored chat
14 sessions as part of your assistance in this investigation?

15 A. Yes, I did.

16 MR. GROHARING: May I approach, your Honor?

17 THE COURT: You may.

18 MR. GROHARING: I've handed the witness a compact
19 disk.

02:19 20 BY MR. GROHARING:

21 Q. Special Agent Hughes, do you recognize that disk?

22 A. I do.

23 Q. What is that disk?

24 A. This disk contains items that were downloaded from a
25 computer during an authorized search.

1 MR. GROHARING: I'm sorry, your Honor. May I approach
2 again? I have one more document to show him.

3 THE COURT: Go ahead.

4 BY MR. GROHARING:

5 Q. Special Agent Hughes, on that disk, is it fair to say
6 that's labeled as Exhibit 1B72?

7 A. It's labeled as "1B1" but it's also referred to as "1B72."

8 Q. Okay. And why would it be referred to as both?

9 A. Just nomenclature.

02:20 10 Q. Two separate designations within the FBI file?

11 A. Right.

12 Q. You're familiar with the items are on that disk, though,
13 correct?

14 A. Yes.

15 MR. GROHARING: I've provided the witness I believe
16 what's pages 6 through 8 of Government Exhibit 794.

17 Q. Are there three pages to that exhibit, Special Agent
18 Hughes?

19 A. There's seven. There might be --

02:20 20 Q. I'm not even close. So that's pages 6 through 13 of
21 Exhibit 794. Is that correct?

22 THE COURT: Twelve, actually. Six through 12,
23 inclusive.

24 Just for clarity, could you give the first exhibit
25 number and the last exhibit number? That might --

1 BY MR. GROHARING:

2 Q. If you could, Special Agent Hughes, just read the first
3 exhibit number on that list.

4 A. Yes. The first exhibit number is 495.

5 Q. And what is the last exhibit number?

6 A. The last exhibit number is 737.

7 Q. Are you familiar with those exhibits?

8 A. Yes, I am.

9 Q. And have you had the opportunity to review those exhibits
02:21 10 and compare them to what's found on the disk that you
11 previously talked about?

12 A. Yes. So on this disk contains some of the chats that were
13 downloaded from the computer, and this exhibit list is some of
14 those chats that are contained on this disk. And what I did
15 was compared the chats on the disk to the chats listed in the
16 exhibit list to ensure they are the same.

17 MR. GROHARING: Your Honor, at this point I'd offer
18 the exhibits.

19 THE COURT: All right. On the same conditions.

02:22 20 MR. GROHARING: Your Honor, I would like to display
21 Exhibit 738A for the witness only.

22 BY MR. GROHARING:

23 Q. Special Agent Hughes, are you familiar with this exhibit?

24 A. Yes, I am.

25 Q. What is it?

1 A. It's a certification that accompanies the return of
2 records request. In this case it accompanies the return of
3 records requested from Pakistan International Airlines
4 certifying that the records provided are accurate.

5 MR. GROHARING: Okay. Could I please have Exhibit
6 738?

7 Q. Do you recognize Exhibit 738?

8 A. Yes. So these are the actual records provided by
9 Pakistani Airlines.

02:23 10 MR. GROHARING: Your Honor, I would ask that Exhibit
11 738A and 738 be admitted into evidence.

12 MS. BASSIL: Same, your Honor.

13 THE COURT: Same?

14 MS. BASSIL: With the same provisions we had discussed
15 earlier, your Honor.

16 (Government Exhibit Nos. 738A and 738 received into
17 evidence.)

18 THE COURT: All right. We've gone past 11. I think
19 we'll take the morning recess at this point.

02:23 20 THE CLERK: All rise for the Court and jury. The
21 Court will take the mornings recess.

22 (The Court and jury exit the courtroom and there is a
23 recess in the proceedings at 11:07 a.m.)

24 (Court in at 11:34 a.m.)

25 MR. CARNEY: Your Honor, I asked if we could see you

1 prior to the jury coming out in the interests of efficiency.

2 I can alert your Honor that I believe the government
3 is virtually done with this witness, and our cross-examination
4 will be very brief. And then we would be asking to raise an
5 important legal issue before your Honor.

6 Just to set it up, the government intends to call
7 translators who have translated documents. We're not
8 contending that the verbatim translation of a full document is
9 inaccurate. Therefore, if the document is admissible, the
02:52 10 translation is admissible.

11 Where we have a problem is the government has certain
12 documents that it has not fully translated, and they will
13 attempt to have a translator explain what the document is
14 about. And we object to that on a number of grounds. When
15 they were going to offer it in writing, we submitted to your
16 Honor a memorandum of law indicating what the objections were.
17 And just to revisit them very briefly, the Rule of Verbal
18 Completeness; the Best Evidence Rule; the summary witness
19 limitations; the right of the defendant to confront the
02:53 20 evidence against him, meaning if it's an Arab document that
21 they're offering, he has a right to confront by seeing what the
22 translation of it is. The jury should be able to look at it,
23 also.

24 Finally, and certainly not least, is the fact that
25 someone may be able to translate a document from one language

1 to another, but that doesn't give that witness an expertise to
2 explain that. For example, if a witness could translate the
3 play Henry V from English to French, then that would be the
4 skill. But would that witness be allowed to say that her
5 summary of what this play is about is that an English king goes
6 to France. France valiantly defends their country. They
7 spectacularly perform with integrity and bravery. And through
8 mere luck, the king gets to win, and then when he returns to
9 England, he gets married, as opposed to people reading the
02:54 10 actual words of the Shakespeare play.

11 Any other context that we could put it in this court
12 would illustrate that no witness would be allowed to take a
13 written document in English and tell the jury what they think
14 the important things are. Let me give you a specific example
15 to compare the verbatim translation with the summary. In one
16 of the summaries, the translator contends that a portion of the
17 document says, "It is spreading the call to Islam." The Arabic
18 text is actually so much more elaborate and says, "This is
19 spreading the call of God, the Glorious, and the message of his
02:55 20 religion, his book, and following in the path of his chosen
21 prophet in the terms of mercy, truthfulness, generosity,
22 fellowship, patience, and endurance, steadfastness and the
23 pursuit of Islamic works."

24 There is a huge difference between those two. And
25 just as I would object if written summaries would come in, I

1 submit that a translator cannot be permitted to give his or her
2 impression of what a document is about. Thank you.

3 THE COURT: Mr. Chakravarty.

4 MR. CHAKRAVARTY: Thank you, your Honor. Your Honor,
5 the first item I'd want to address is to clarify that summary
6 translation documents were created by these linguists. We've
7 provided those to defense. We have marked them for
8 identification as exhibits.

9 We are not seeking to introduce those summary
02:56 10 translation exhibits into evidence largely persuaded by counsel
11 that there is some risk, although the government's case
12 research evidences that there is some support, also. But we
13 think that's unnecessary to kind of cross that bridge.

14 What we're talking about here, then, is not a summary
15 exhibit, and that's not the proper lens through which to look
16 at this. Rather, this is an item of evidence, which is in
17 evidence, which the jury doesn't know what it is. And the
18 witness is simply going to tell the jury what that witness'
19 assessment is of what the thing is.

02:57 20 If it was a lay witness, the government would offer
21 that that would be sufficient. If you go into somebody's
22 house, you see a book, you seize the book. You say, I found a
23 book, and this is what the book was. But in this case, we
24 actually have an expertise of these witnesses that is outside
25 the kin of the jury so that they can further go on to say, I've

1 looked at that book. I've read that book, and I know what that
2 book is, not the interpretation, not the liturgical -- in a
3 teleological sense of what the book purports to say and where
4 it's from but, rather, this is what the book is. And, you
5 know, that can be a paragraph long description. It can be a
6 couple of sentences long description, which is the government's
7 intention certainly for purposes of today.

8 The exhibits, there are about -- I think I intimated
9 earlier, about eight to ten exhibits which the government would
02:57 10 have -- which were seized -- the first set were seized in the
11 defendant's room in 2006. They've been admitted into evidence
12 as Arabic language documents, which the jury doesn't -- can't
13 understand. The witness is simply going to say, I read this
14 document. This is what that document is. That is something
15 that's not only helpful. It's essential for the jury to get
16 the benefits of that expertise.

17 And addressing Mr. Carney's concerns, they can dispute
18 that. They can present contrary evidence. They can -- they
19 have the right to confront. They have the ability and the
02:58 20 resources to create a verbatim translation if they so choose if
21 they feel like there has been some misapprehension conveyed to
22 the jury.

23 So through that lens of reference, whether it be 703
24 or just, I guess, 402, that this is relevant information that
25 the jury needs in order to assess the evidence. For that

1 reason, this is not a summary exhibit, which was essentially
2 the case law that counsel put forward.

3 THE COURT: I agree with the defense objection. I
4 don't see a difference between written summaries and oral
5 summaries. So I think a translation of all or part -- I mean,
6 I don't think it's necessary that the entire document be
7 translated if the government intends only to point to some part
8 of it. I think it would be sufficient for an excerpt to be
9 faithfully translated. It would have to be -- there would be
02:59 10 an opportunity to contextualize it, but I think that would
11 shift back to the defendant to do that. So one possibility is
12 literal translation.

13 I would agree that a 702 expert could comment on the
14 substance, in summary form, of an extended document, but the
15 relevant expertise would be, as Mr. Carney points out, in the
16 subject matter, not in the translation. So that if you had a
17 -- to use his example, if you had a French translator who was
18 also a Shakespearean scholar, then you could do both: vouch
19 for the translation and vouch for the interpretation.

03:00 20 But that's because of the latitude that we give to
21 Rule 702 witnesses, that their opinions must be soundly based.
22 But the subject -- the reasons for the opinion don't
23 necessarily have to be independently admissible, and so we give
24 wider latitude.

25 I don't know if these linguists could qualify in that

1 way. If they could, then I would be receptive to that kind of
2 testimony. But I think, as linguists only, as translators
3 only, they don't have the expertise to summarize.

4 I think the government has conceded they're not
5 summary in the 1006 sense, and I think that's true because,
6 unlike the summary, which is the product of simply compilation,
7 commonly mathematical, where you can be satisfied as to the
8 validity of the summary because of the methodology applied,
9 such as addition. With respect to the summary of a narrative,
03:01 10 there's an intellectual intercession by the summarizer, and
11 that can be permitted in 702 context, but I don't think,
12 outside of 702, it would be proper.

13 MR. CHAKRAVARTY: That's clear, your Honor. For
14 purposes of today, then, those witnesses obviously will not be
15 talking about each of those exhibits until a verbatim
16 translation can be prepared for portions of those exhibits.
17 And as we will do then -- thank you for that guidance because
18 with regards to videos and other pieces of evidence for which
19 we now have summaries, we will do portions of verbatim
03:01 20 translations that may affect -- for purposes of notice, it may
21 affect the specific clips that have been marked for
22 identification with regards to portions of those videos.

23 THE COURT: All right. It may necessitate re-calling
24 the witnesses.

25 MR. CHAKRAVARTY: Correct, your Honor.

1 MS. BASSIL: Your Honor, just so it's clear, there's a
2 civilian witness tomorrow -- I think I counted five videos that
3 are in Arabic. And so -- that had translation after them and
4 they are summary translations. So what does that mean?

5 MR. AUERHAHN: Your Honor, I advised Miss Bassil that
6 we're not going to use the translations with the witness. For
7 her convenience, I put it on the list.

8 MS. BASSIL: That was before we had the discussion. I
9 know that.

03:02 10 MR. AUERHAHN: We're not going to seek to introduce
11 the translations of the videos. Some segments of the video
12 clips we'll play. One is the Umar Hadeed, which has subtitles.
13 The others, the image is all you need. You don't need, for the
14 purpose of the witness tomorrow, the translation.

15 MS. BASSIL: Okay. I may raise that tomorrow.

16 THE COURT: Okay. Ready for the jury?

17 MR. CARNEY: Yes, your Honor.

18 (The jury entered the room at 11:47 a.m.)

19 MR. GROHARING: Your Honor, I'd ask for permission to
03:04 20 display Exhibit 740A for the witness.

21 THE COURT: Okay.

22 Q. Special Agent Hughes, do you recognize that document?

23 A. Yes, I do.

24 Q. What is it?

25 A. This is a Certificate of Authenticity pursuant to a

1 request of records from Comcast.

2 MR. GROHARING: Permission to display Exhibit 740.

3 Q. Do you recognize that exhibit, Special Agent Hughes?

4 A. Yes. That's the actual records that were provided by
5 Comcast.

6 MR. GROHARING: Your Honor, I would ask to admit those
7 records, Exhibit 740A and Exhibit 740.

8 MS. BASSIL: No objection, your Honor.

9 THE COURT: Okay, 740 and 740A are admitted.

03:05 10 (Exhibit No. 740A received into evidence.)

11 (Exhibit No. 740 received into evidence.)

12 MR. GROHARING: Your Honor, permission to display
13 Exhibit 742A for the witness.

14 Q. Special Agent Hughes, do you recognize that exhibit?

15 A. Yes, I do.

16 Q. What is it?

17 A. It's a Certificate of Authenticity for records provided by
18 AT&T.

19 MR. GROHARING: Permission to display Exhibit 742.

03:05 20 THE COURT: Okay.

21 Q. Special Agent Hughes, do you recognize that exhibit?

22 A. Yes, I do. These are the actual records provided by AT&T.

23 MR. GROHARING: Thank you. Your Honor, permission to
24 admit Exhibits 742A and 742.

25 MS. BASSIL: Your Honor, 742 is subject to what we had

1 spoken about before.

2 THE COURT: Is that a multipage?

3 MS. BASSIL: It's multipage, yes.

4 THE COURT: Okay. We'll admit it under those
5 conditions.

6 (Exhibit No. 742A received into evidence.)

7 (Exhibit No. 742 received into evidence.)

8 Q. Just to be clear, when I ask you, Special Agent Hughes --
9 if I ask you about an exhibit, I'm asking you about all pages
03:06 10 contained within that exhibit.

11 A. Yes, I understand.

12 MR. GROHARING: Your Honor, permission to display
13 Exhibit 743A.

14 THE COURT: Okay.

15 Q. Special Agent Hughes, are you familiar with that exhibit?

16 A. Yes. This is a Certificate of Authenticity certifying
17 that the records provided by Verizon are authentic.

18 MR. GROHARING: Permission to display Exhibit 743,
19 your Honor.

03:07 20 THE COURT: Okay.

21 Q. Special Agent Hughes, are you familiar with that exhibit?

22 A. Yes. These are the actual records provided by Verizon.

23 MR. GROHARING: Your Honor, the government offers
24 Exhibit 743 and 743A.

25 MS. BASSIL: Your Honor, again, subject to the same

1 provisions.

2 THE COURT: Okay.

3 (Exhibit No. 743A received into evidence.)

4 (Exhibit No. 743 received into evidence.)

5 MR. GROHARING: Your Honor, permission to display
6 745A.

7 Q. Special Agent Hughes, are you familiar with that exhibit?

8 A. Yes. This is a Certificate of Authenticity that
9 accompanied records provided by Eastern Bank.

03:07 10 MR. GROHARING: Permission to display Exhibit 745.

11 THE COURT: Yup.

12 Q. Special Agent Hughes are you familiar with that exhibit?

13 A. Yes. These are records that were provided by Eastern
14 Bank.

15 MR. GROHARING: Your Honor, the government would offer
16 Exhibits 745 and 745A.

17 MS. BASSIL: Your Honor, 745, subject to the same
18 provision. 745A, no objection.

19 THE COURT: Well, is there any need for that on this?
03:08 20 I don't know what's in them. This is a little different from
21 some of the communication ones.

22 MS. BASSIL: Yes, there is.

23 THE COURT: There is, okay.

24 (Exhibit No. 745A received into evidence.)

25 (Exhibit No. 745 received into evidence.)

1 MR. GROHARING: Your Honor, permission to display
2 Exhibit 247.

3 THE COURT: 247?

4 MR. GROHARING: Yes, your Honor.

5 THE COURT: Okay.

6 Q. Special Agent Hughes, earlier I asked you about a number
7 of exhibits -- a number of emails that were obtained pursuant
8 to a FISA search. Are you familiar with the exhibit that's
9 contained on the screen?

03:08 10 A. Yes. As in other searches, this is the -- again, you can
11 think of it as the cover sheet to the records. It identifies
12 the subscriber information and other information that was
13 entered associated with the screen name or login name. So it
14 accompanied the return of the search warrant.

15 MR. GROHARING: Your Honor, the government offers
16 Exhibit 247.

17 MS. BASSIL: No objection.

18 THE COURT: Okay. That's admitted.

19 (Exhibit No. 247 received into evidence.)

03:09 20 Q. Special Agent Hughes, earlier you talked about a CD that
21 you still have at the witness stand with you. You described it
22 as 1B1 markings on it. Could you please explain for the jury
23 where that CD came from?

24 A. So this CD is a -- evidence that was collected pursuant to
25 a search warrant in 2006. And there was a bigger piece of

1 evidence collected. This CD represents a section of that
2 evidence. So it's -- we would call it a derivative evidence
3 from a larger piece, almost like a chapter of a book.

4 Q. What is that larger piece?

5 A. So the larger piece was a review of the hard drive of a
6 computer, and these are -- this CD, among other things,
7 contains chats that were stored on the hard drive.

8 Q. Are you familiar with the particular hard drive that
9 you're referring to?

03:10 10 A. Yes.

11 Q. Whose hard drive was that?

12 A. That was Tarek Mehanna's.

13 MR. GROHARING: One second, please, your Honor.

14 No further questions, your Honor.

15 CROSS-EXAMINATION BY MS. BASSIL:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Agent Hughes, I wanted to ask you a question about a few
19 things. First, you talked about emails that you received from
03:11 20 a search warrant served on Yahoo in 2009?

21 A. Yes.

22 MS. BASSIL: If we could have Exhibit 439 come back up
23 and if we could scroll down.

24 Q. Agent, from this, this was -- this told you what Yahoo
25 sent to you, is that right?

1 A. Yes. In the course of the request, Yahoo provides all of
2 the information associated with that screen-in name or login
3 name.

4 Q. And so -- I just want to be clear. You took -- he
5 reviewed certain emails, correct?

6 A. Yes.

7 Q. And those emails were on your system, this system that you
8 talked about?

9 A. Yes. Well, from -- is this the 2009 search?

03:12 10 Q. Yes.

11 A. So no. Those emails weren't listed on our DWS storage
12 system. Those -- emails from this search warrant were stored
13 in evidence, and then it's from the items in evidence that I
14 looked at the emails.

15 Q. Did you look at all the emails?

16 A. No.

17 Q. You only looked at certain emails?

18 A. Yes.

19 Q. How did you determine which emails you looked at?

03:12 20 A. I compared the emails that were going to be presented on
21 exhibits to emails on the disk. So the emails I looked at were
22 only the ones that were going to be presented in court.

23 Q. And do you know who selected those emails?

24 A. The case agents.

25 Q. The case agents. That would be Heidi Williams and Tom

1 Daly?

2 A. Yes.

3 Q. Now, what I -- so on the -- you had a number of
4 intercepted -- you had a number of emails and a number of
5 people, is that correct, that you matched to make sure that
6 these emails were the ones that they had given you?

7 A. Yes. I compared -- I made sure that they were the same
8 ones.

9 Q. If you would look at Exhibit 739, it says, "Messenger
03:13 10 friend list." Do you see that?

11 A. I do.

12 Q. There are far more people on that -- far more email
13 addresses on that then you compared for exhibits, correct?

14 A. I didn't -- yes. There's more email addresses on that
15 than I looked at.

16 Q. Do you know how many emails were received from Yahoo
17 pursuant to this 2009 search warrant?

18 A. I don't.

19 Q. Do you know how many people -- different people -- like,
03:14 20 one person could send more than one email. Do you know how
21 many separate people sent emails pursuant to that 2009 search?

22 A. I do not.

23 Q. Now, the same thing I wanted to ask you about were these
24 intercepted telephone calls. And I believe you examined, I
25 would say, about 25 intercepted telephone calls. If you want

1 to look at your chart, you could.

2 A. I don't have the list in front of me. It was -- I can't
3 remember the exact number, but it was --

4 Q. I'm sorry. About 12, actually?

5 A. About a dozen, yes.

6 Q. About 12 or so?

7 A. That sounds right.

8 Q. Were you aware of how many telephone calls in total were
9 intercepted?

03:15 10 A. I was not aware.

11 Q. So you were given -- again, who gave you the telephone
12 calls that you matched against the evidence that you had?

13 A. The case agents.

14 Q. Did you have any discussion with the case agents about how
15 they selected certain telephone calls?

16 A. No, I didn't.

17 Q. Now, turning to the instant messages, you had matched --
18 let me ask you about this. All right. So instant messages or
19 chat, this is when two people are on a computer in different
03:15 20 places, right? Are you familiar with this?

21 A. With the process of instant messaging?

22 Q. Yes.

23 A. Yes.

24 Q. So two people are in two different locations on computers,
25 correct? And one person types some message, and the other

1 person responds, correct?

2 A. Okay. Yes.

3 Q. So it's kind of like -- it's almost like a telephone call
4 except you're using a computer; would that be fair to say?

5 A. I don't know if I'm the right one to ask. You could
6 expand it out for an email. So, no, I wouldn't say that. I
7 would say it's different.

8 Q. But it is someone who is using -- two people who are using
9 their computer to sort of have a conversation at the same time?

03:16 10 A. Okay. Yeah. It's two people exchanging information, yes.

11 Q. So like an email, for example, I might send you an email
12 in the morning, and you might get back to your office and
13 respond to me in the afternoon?

14 A. Okay.

15 Q. That's different than these chats?

16 A. As far as time?

17 Q. Yes.

18 A. From your example, yes.

19 Q. Now, do you know how many chats -- and the chats were
03:17 20 received pursuant to what? That was from the computer, the
21 2006 computer?

22 A. Yes.

23 Q. From the hard drive?

24 A. That's correct.

25 Q. And are you familiar with -- are you familiar with whether

1 or not chats -- a company that provides your computer service,
2 can they access your chats, do you know?

3 A. I do not know.

4 Q. Okay. But these chats were stored on the hard drive?

5 A. Correct.

6 Q. And do you know how many chats there were in total?

7 A. I don't.

8 Q. Do you know there were over 3,000 pages of chats once they
9 were transcribed?

03:17 10 A. I didn't view every chat, so I don't know an exact number.

11 Q. You only knew the chats that you were given a list of, is
12 that correct?

13 A. Yes.

14 Q. Do you know who chose what chats?

15 A. Case agents.

16 Q. Did you have any discussion with the case agents about
17 what chats they chose?

18 A. No, I didn't.

19 Q. And, again, if I can ask you, on the emails that you
03:18 20 received from Yahoo --

21 MS. BASSIL: If you could pull up 247 just for the
22 witness.

23 Q. This is the Yahoo account management tool, correct?

24 A. Yes.

25 Q. And do you know for what length of time emails were

1 obtained? Was it from what date to what date?

2 A. I don't.

3 Q. Do you know how many emails were received from Yahoo?

4 A. I don't.

5 Q. And, again, all you did -- what you did was -- strike
6 that.

7 The agents gave you the emails, and you made sure they
8 were the same emails they gave you?

9 A. No. I made sure that the ones that were going to be
03:18 10 submitted as evidence were -- I verified the source of the
11 information so that it came from either -- whatever search
12 generated the evidence.

13 Q. So when Yahoo sent the emails, I assume they sent it on a
14 CD?

15 A. It depends which one.

16 Q. Okay.

17 A. Sometimes it was electronic. Sometimes it was on a CD.

18 Q. Were some of the emails on a CD, for example?

19 A. I don't know how it was received. The ones I viewed were
03:19 20 on a CD. And some of them were viewed on the central system.

21 Q. How did Yahoo send it, do you know?

22 A. I don't.

23 Q. And how -- who made the CD that you looked at?

24 A. On one of them -- depending on which one. It was
25 different agents in the process and through -- you know,

1 submitted into evidence and then pulled back out for my review.

2 Q. And you don't know -- do you know where the agents got
3 that information?

4 A. Yeah. They would list it. When the evidence is received,
5 we have procedures where it's -- the source of the evidence is
6 documented, and then it's put into, you know, an evidence
7 control area that has limited access. And then as it's
8 necessary to review that evidence, we would go check it out,
9 document that it was checked out, for what purpose, review it
03:20 10 as necessary, and then resubmit it back into the evidence
11 control.

12 Q. Okay. But what you reviewed, for example, was not all of
13 the emails sent or received by Tarek Mehanna?

14 A. Correct. I didn't review all of them.

15 Q. And you did not review all of the instant messages that
16 were exchanged back and forth between Tarek Mehanna and another
17 person?

18 A. No, I did not.

19 Q. And you did not review all of the telephone calls that
03:20 20 went back and forth between Tarek Mehanna?

21 A. No, I did not.

22 MS. BASSIL: Thank you. I have no other questions.

23 THE COURT: In my role as chief accountant, I just
24 want to be sure that -- there was reference to 739. My notes
25 don't indicate that that was offered, even under the conditions

1 that we've been admitting these. I don't know whether that was
2 intentional or not. Maybe my notes are wrong. That's the
3 Yahoo certification.

4 MS. BASSIL: Right. I just want to see it, and then I
5 will be able to say. If it wasn't, I have no objection to it
6 being an exhibit.

7 THE COURT: Okay. It may have been my error.

8 MS. BASSIL: It was?

9 THE COURT: That's what the clerk says.

03:21 10 Mr. Groharing.

11 REDIRECT EXAMINATION BY MR. GROHARING:

12 Q. Special Agent Hughes, I just want to clarify a couple
13 points about the various searches that you were involved
14 reviewing in this case. You testified about some emails that
15 were intercepted pursuant to FISA authorization. Now, when you
16 reviewed those emails, how did you do that?

17 A. Those emails would be stored on our central system. So we
18 would review them through the computer, through accessing the
19 Data Warehouse System.

03:22 20 Q. Is it fair to say that when an email is intercepted
21 pursuant to FISA, it comes to the FBI electronically and then
22 into that system?

23 A. Yes.

24 Q. Now, you also testified about some emails that were
25 provided by Yahoo pursuant to a search warrant?

1 A. Yes.

2 Q. When emails are provided pursuant to a search warrant, how
3 are those provided to the FBI?

4 A. It depends. It could be on a CD, or it could be --
5 records could be provided electronically. So it really depends
6 on the amount and everything.

7 Q. In this case, regarding the 2009 Yahoo search that you
8 referenced, do you know how those emails were provided to the
9 FBI?

03:23 10 A. Yes. These are provided on a compact disk, a CD.

11 Q. Is it correct to say that you then reviewed a CD that was
12 made from that CD with a subset of the emails provided by
13 Yahoo?

14 A. Right. There were -- I reviewed the CD that was the
15 subset of the total records returned by Yahoo. Because there
16 were certain conversations that maybe were relevant to
17 attorney-client privilege relationships that were not
18 necessary, and in order to maintain that relationship, those
19 were walled off and not made available for review. So the only
03:23 20 ones that I could review were the ones pertinent.

21 MR. GROHARING: Nothing further, your Honor.

22 MS. BASSIL: Just one question.

23 RE-CROSS-EXAMINATION BY MS. BASSIL:

24 Q. You said that -- so did you review -- other than those
25 emails that might have been between my client and his attorney,

1 you did or did not review all of the 2009 emails from Yahoo?

2 A. So there was -- I don't know exactly how many were
3 provided by Yahoo, but I reviewed a disk that was created that
4 I know was a subset of the actual disk provided by Yahoo. So
5 there was -- whatever percentage of that total amount was on
6 the disk that I reviewed because of certain reasons. There's
7 certain information, like attorney-client privilege.

8 Q. I understand.

9 A. So the CD that I reviewed contained all the emails -- it
03:24 10 was in a pdf format. So it was a very large format. In
11 identifying and locating the ones specifically for
12 identification, you know, I'd scroll through multiple,
13 multiple, you know, emails. So there might be ones that I
14 didn't pay attention to that -- but I would, in the process of
15 scrolling through this big, long document, you know, I might
16 have seen.

17 Q. So how many emails did you scroll through in this big,
18 long document?

19 A. The total number, I don't know. I was -- I was
03:25 20 concentrating on just identifying the specific ones to make
21 sure to verify the source.

22 Q. Did you identify them -- you identified them by date?

23 A. Yes.

24 Q. Or by number?

25 A. By date and by body, you know, to the text of the email to

1 make sure it was an actual -- the actual copy.

2 Q. And paid no attention to the other emails? That was not
3 your job?

4 A. Yeah. If I did, it was peripheral as I scrolled by, but I
5 didn't pay detailed attention to, oh, this email was sent on
6 this date, no.

7 Q. How long do you think this document was that you had to
8 scroll through?

9 A. I don't know. I don't know how to describe it. It was
03:26 10 extensive, so printed out, it would be several pages, maybe
11 hundreds of pages.

12 Q. Not the -- the emails themselves would be hundreds of
13 pages or the names of the emails would be hundreds of pages?

14 A. Oh, no, the emails themselves because the format that I
15 reviewed it was a pdf of the document. So all the emails were
16 listed in their entirety with header information, and I would
17 scroll through those in order to identify it to the one that I
18 needed. So I couldn't guess how many pages it would be.

19 MS. BASSIL: Thank you.

03:26 20 THE COURT: All right, Mr. Hughes. You may step down.

21 MR. CHAKRAVARTY: The government calls Leah Vallee.

22 THE CLERK: Ma'am, want to step up here, please.

23 Remain standing. Raise your right hand.

24 LEAH VALLEE, Sworn

25 THE CLERK: Please be seated. State your name.

1 THE WITNESS: Leah Vallee.

2 THE CLERK: And spell it for the record, please.

3 THE WITNESS: L-e-a-h; last name, V-a-l-l-e-e.

4 DIRECT EXAMINATION BY MR. CHAKRAVARTY:

5 Q. Good afternoon, Miss Vallee.

6 A. Hello.

7 Q. Where do you work?

8 A. I work for the FBI.

9 Q. What do you do there?

03:28 10 A. I'm a translator.

11 Q. What language do you translate?

12 A. English into Arabic and Arabic into English.

13 Q. How long have you worked at the FBI?

14 A. Ten years.

15 Q. Is Arabic your native tongue?

16 A. Yes.

17 Q. How long have you worked as a translator in any capacity?

18 A. The entire ten years with the Bureau, and prior to that, I
19 did some tutoring and a little work here and there.

03:28 20 Q. What language were you educated in?

21 A. French and Arabic.

22 Q. When did you learn English? When did you begin to learn?

23 A. Sixth grade, I think, fifth grade.

24 Q. What was the medium of study through high school for you?

25 A. Just general course of studies.

1 Q. In terms of what language was your course of studies?

2 A. All three at that point, all three languages.

3 Q. Did you receive education after high school?

4 A. Yes. I went to college.

5 Q. Did you get a degree?

6 A. Yes, political science and international relations.

7 Q. Where was that from?

8 A. At UMass Boston.

03:29 9 Q. You mentioned you did tutoring in Arabic. What did that
10 entail?

11 A. Yeah, with little kids during summertime.

12 Q. What language do you use in your personal life?

13 A. Both Arabic and English.

14 Q. Do you have family overseas?

15 A. Yes.

16 Q. In an Arabic-speaking country?

17 A. Yes.

18 Q. What language do you use when you go there?

19 A. Arabic.

03:29 20 Q. How frequently do you go back?

21 A. Every couple of years.

22 Q. Do you speak and write Arabic fluently?

23 A. Yes.

24 Q. How about English?

25 A. Yes.

1 Q. To become a translator at the FBI -- excuse me, a linguist
2 at the FBI, do you have to demonstrate some proficiency?

3 A. Of course.

4 Q. Describe what that entails.

5 A. We have to take a series of tests. I think we begin with
6 the written exam. And that's -- I think that's two parts or
7 three parts. I can't remember. It's been awhile now. It's
8 been about 12 years maybe. I think it's two or three parts.
9 You pass the first phase. You move on to the next one. That's
03:30 10 the written one. When you pass all two or three parts of the
11 written test, you move on to the oral test.

12 Q. Who determines whether you're proficient enough to
13 translate for the FBI?

14 A. Not sure where the written test goes, but I know we're
15 tested by a board of two or three people doing the oral test.
16 So --

17 Q. But they're FBI?

18 A. They're testers, yes; they're FBI testers.

19 Q. Is that across the FBI in the various different languages,
03:31 20 in the various different field offices?

21 A. Yes.

22 Q. Before you became employed by the FBI, did you have to
23 undergo that procedure?

24 A. Yes.

25 Q. Okay. Obviously, you passed?

1 A. Yes.

2 Q. You mentioned that you had been -- you took it maybe 12
3 years ago. Is that before you actually were employed by the
4 FBI?

5 A. Yes. The application process takes awhile, so I think the
6 first part of the application process is the test itself. And
7 that takes few months between the written and the oral, and
8 then they do your background and everything else. So it takes
9 awhile. And I started with the Bureau in 2001, so probably
03:31 10 took the test in 1999 or 2000. I'm not exactly sure.

11 Q. Then after you -- I assume you were hired. And then was
12 there periodic testing, or was there a way to determine whether
13 you were still proficient?

14 A. Well, we go through a lot of training. There's a number
15 of mandatory credits that we have to take every year for
16 training purposes. And then we have internal quality control
17 process. And there's also the operational review process that
18 we do. The operational review process takes place pretty much
19 every time we translate a product. The quality control is a
03:32 20 percentage of the work we do. And it goes out of the office,
21 and there's qualified reviewers who would review your work and
22 decide if it's satisfactory or not.

23 Q. Is it fair to say there are a variety of different types
24 of translations that you're asked to do?

25 A. Yes.

1 Q. Verbatim translation is one way that you translate items?

2 A. Yes.

3 Q. Describe what verbatim translation is.

4 A. It's not a summary. You take the whole product from one
5 language and you produce it in another language.

6 Q. So it's like word for word, essentially?

7 A. Yes. Well, I --

8 Q. You hesitate. Why wouldn't it be word for word?

9 A. Because it's tricky, word for word, because there are
03:33 10 expressions that you can't produce word for word in a different
11 language. So you have to find the equivalent. So it may not
12 be word for word, but it's the complete sense or expression
13 that you transform into the other language.

14 Q. And that -- you're taking the equivalent words from Arabic
15 and translating into English or vice versa?

16 A. Or the other way around, correct.

17 Q. In the course of your work at the FBI, have you had
18 occasion to translate all sorts of documents and other media?

19 A. Oh, yes.

03:33 20 Q. Could you venture a guess on how many items that you have
21 translated?

22 A. Throughout the years?

23 Q. Yes.

24 A. Tens of thousands of pages at this point, hundreds of
25 hours of audio material.

1 Q. Is your work reviewed by other FBI linguists?

2 A. Yes.

3 Q. You mentioned there was an operational review. Describe
4 what that entails.

5 A. It's a little informal process where the original linguist
6 would translate the work, and you'd give it to your colleague
7 to quickly look at and see -- think of it as editing in a
8 sense. And they, you know, provide feedback. Could be oral,
9 too. You know, you go back and forth. I think this could be
03:34 10 this. This means that. And then you share thoughts on it.
11 And then you decide what's the best way to put it. So that's
12 the operational review process.

13 Q. Do you consult other sources such as dictionaries?

14 A. Absolutely, yeah, dictionaries, the internet, other people
15 and other places.

16 Q. And to what end? What are you trying to do by consulting
17 these sources?

18 A. Till you get it right.

19 Q. You mentioned that there was a certain percentage of your
03:34 20 translations that go for quality control review?

21 A. Yes.

22 Q. What is that?

23 A. That's 30 percent of -- of the project you're working on,
24 of the material presented to you in that particular project.
25 Thirty percent of the material would have to be translated.

1 Q. What does quality control mean? What happens to that?

2 A. They take it and they look at it, and they decide if the
3 product is satisfactory or not.

4 Q. Who is "they"?

5 A. The qualified -- well, the quality control qualified
6 people, I guess. I mean, they go through a process. They go
7 through a training class to become qualified reviewers.

8 Q. Are there quality control people here in Boston?

9 A. Yeah. I'm myself a quality control reviewer.

03:35 10 Q. So you review other people's work?

11 A. Yes.

12 Q. Is that the process that you undergo for every translation
13 for which you ultimately present to a court?

14 MR. CARNEY: I object, your Honor.

15 THE COURT: Overruled.

16 MR. CARNEY: May I approach, please?

17 THE COURT: All right.

18 (SIDEBAR CONFERENCE AS FOLLOWS:

19 MR. CARNEY: Your Honor, I object based on the
03:36 20 defendant's right of confrontation. If this witness testifies
21 that she did work and translated it, I have no objection. If
22 she says that someone else reviewed my work and approved my
23 work, then I am denied my right to confront that second
24 witness, and I would submit that she should not be able to say
25 somebody else reviewed and approved my work in this case.

1 THE COURT: Well --

2 MR. CHAKRAVARTY: She's a translator. She's just
3 saying --

4 THE COURT: We'll hear what the evidence is. If she
5 says it's her work, then that would be one thing. If she says
6 I'm just repeating somebody else's work, that would be another
7 thing.

8 MR. CARNEY: Maybe.

9 THE COURT: I understand you have an embed point. You
03:37 10 think it's embedded. To that extent, I think I would overrule
11 the objection.

12 MR. CARNEY: If I could just make it clear, my
13 objection is not if she says I translated this work. My
14 objection is if she either states or implies that someone else
15 reviewed my work and said my work was correct. It's that
16 second person who I'm not getting a chance to confront, and
17 that's the confrontation objection.

18 THE COURT: Okay. On the present evidence, the
19 objection is overruled.

03:37 20 . . . END OF SIDEBAR CONFERENCE.)

21 Q. Miss Vallee, that process that you were describing, is
22 that the quality control review process at the FBI?

23 A. Yes.

24 Q. Have you previously testified in court about translations?

25 A. Yes.

1 Q. In fact, have you testified before this court before?

2 A. Yes.

3 Q. Again, the language was Arabic to English?

4 A. Correct.

5 Q. Or English to Arabic?

6 A. Correct.

7 Q. With that, I'm going to ask you about this particular
8 case. Did the prosecution team, meaning the prosecutors and
9 the agents involved with this case, did they present to you a
03:39 10 number of documents and other media to have translated for
11 court?

12 A. Right.

13 Q. Did you divide that load with your colleague, and Marie
14 Doursounian?

15 A. Correct.

16 Q. So I'm going to ask you now about specifically the items
17 that you translated.

18 A. Okay.

19 Q. In addition, I should add, as part of your role as a
03:39 20 linguist at the FBI, have you had occasion to translate
21 telephone communications?

22 A. Yes, many of them.

23 Q. You smile because there's many. I think you said there's
24 several hundred hours worth of audio communications?

25 A. At least.

1 Q. You have a lot of experience in transcribing
2 communications, is that right?

3 A. Yes.

4 Q. As part of your role in this case, even though they're not
5 always in Arabic, did you transcribe telephone calls?

6 A. Yes.

7 Q. Before coming to court today, did you become familiar with
8 Exhibits 300, 302, 304, 308, 312, 314, 316, 318, and 320 as
9 intercepted telephone calls that you did the transcriptions
03:40 10 for?

11 A. Yes.

12 Q. Were those transcriptions fair and accurate to the best of
13 your ability?

14 A. Yes.

15 Q. In addition, did you -- were you asked to translate
16 particular stored instant message communications?

17 A. Yes.

18 Q. These are what we colloquially call chat logs, correct?

19 A. Correct.

03:40 20 Q. Did you -- like the telephone calls, did you divide that
21 load with your colleague?

22 A. Yes.

23 Q. Specifically with regards to Exhibit 497 to 532, 607
24 through 636, 643 through 670, 679 through 682, 685 and 687, 689
25 through 725, do those reflect your translations of any Arabic

1 language materials?

2 A. Yes.

3 Q. Again, are those fair and accurate translations to the
4 best of your ability?

5 A. Yes.

6 Q. Were there some emails for which you did verbatim
7 translations as well?

8 A. Yes.

9 Q. Specifically, I draw your attention to Exhibits 267 and
03:41 10 297, which were emails containing a chat log. Do you recall
11 translating the chat log that was an attachment to that email?

12 A. Yes.

13 Q. Like the other chat logs, was that a fair and accurate
14 translation of the Arabic language that appeared in those chat
15 logs?

16 A. Yes.

17 Q. Finally, was there another email, which I recently asked
18 you to confirm whether it was a verbatim translation, Exhibit
19 292? Did you confirm whether that was an email containing a
03:42 20 verbatim English translation?

21 A. Yes.

22 Q. Again, was that a fair and accurate translation?

23 A. Yes.

24 MR. CHAKRAVARTY: Your Honor, I don't know if each of
25 those exhibits has been introduced. To the extent it hasn't,

1 the government would ask that each of those exhibits to be
2 introduced.

3 THE COURT: Who's --

4 MR. CARNEY: No objection, subject to the process we
5 discussed earlier, your Honor.

6 THE COURT: These are in the list that we marked as
7 794, right?

8 MR. CHAKRAVARTY: Correct, correct. It's just they
9 have Arabic in it so just authenticate --

03:42 10 THE COURT: They would all be subsumed within that
11 list?

12 MR. CARNEY: Yes, your Honor. That's my belief.

13 Q. Agent Vallee, those are the questions I have for you now.
14 We'll re-call you later in the case.

15 MR. CARNEY: Your Honor, I have no questions. Thank
16 you.

17 THE COURT: Thank you, Miss Vallee. You may step
18 down.

19 THE CLERK: Ma'am, step up here, please. Step up to
03:43 20 the box. Remain standing and raise your right hand.

21 ANN MARIE DOURSOUNIAN, Sworn

22 THE CLERK: Have a seat, please. State your name and
23 spell your last name for the record.

24 THE WITNESS: Ann Marie Doursounian,
25 D-o-u-r-s-o-u-n-i-a-n.

1 THE CLERK: Great. Thank you.

2 DIRECT EXAMINATION BY MR. CHAKRAVARTY:

3 Q. Good afternoon.

4 A. Hello.

5 Q. Where do you currently work?

6 A. I work for the Federal Bureau of Investigation, the FBI.

7 Q. What do you do there?

8 A. I'm a linguist, a language analyst.

9 Q. Do you work with Leah Vallee who just left?

03:44 10 A. I do.

11 Q. Do you basically have the same job as her?

12 A. Yes.

13 Q. How long have you been with the FBI?

14 A. Six years.

15 Q. Before the FBI, what did you do?

16 A. I was a tutor of languages and mathematics at a college.

17 And I -- before that I worked at a bank as well.

18 Q. What level of education do you have?

19 A. Bachelor's.

03:45 20 Q. Did you attend schooling overseas?

21 A. Yes, I did.

22 Q. To what level of schooling did you attend?

23 A. I have a Lebanese baccalaureate, and I also have two years
24 of college in Lebanon.

25 Q. What's the language of study there?

1 A. Arabic, French and English.

2 Q. Is that through grammar school and high school as well?

3 A. Throughout.

4 Q. Are you -- is Arabic one of your native tongues?

5 A. Yes.

6 Q. Do you have any other native tongues or something that you
7 would consider native?

8 A. I'm certified in French as well and I speak Armenian.

9 Q. With regards to your Arabic language skills, are you
03:46 10 fluent in Arabic?

11 A. Yes.

12 Q. Do you speak and write?

13 A. Yes.

14 Q. And the same in English?

15 A. Yes.

16 Q. With regards to your use of the Arabic language, do you
17 use that in your personal contacts as well?

18 A. Yes.

19 Q. And at work, do you work with a group of other linguists?

03:46 20 A. Yes.

21 Q. And they speak Arabic as well?

22 A. Absolutely, yes.

23 Q. And do you -- are you familiar with the operational review
24 process?

25 A. Yes.

1 Q. What is that?

2 A. Operational review is when a second linguist other than
3 the linguist who did the translation of a work looks and
4 reviews the material translated into English, let's say, into
5 the target language.

6 Q. Are you also familiar with quality control?

7 A. Yes.

8 Q. What is that?

9 A. Quality control is more of a -- maybe a formal process of
03:46 10 the operational review. And that comes after the operational
11 review -- well, for court preparation purposes, it comes after
12 the operational review.

13 Q. But, ultimately, each linguist has to vouch for their own
14 translation?

15 A. Absolutely.

16 Q. Did you have to take any proficiency exams before you
17 became a linguist?

18 A. Yes.

19 Q. Did you pass those exams?

03:47 20 A. Yes.

21 Q. Is that standard across the FBI?

22 A. Yes.

23 Q. Approximately how many documents would you say you've
24 translated over your career, roughly?

25 A. I don't know how many.

1 Q. In the hundreds?

2 A. Probably more.

3 Q. Thousands maybe?

4 A. Probably, yes.

5 Q. How about audio materials in terms of, like, telephone
6 calls and audiotapes, videotapes?

7 A. I would say same, maybe even more.

8 Q. Hundreds of hours, maybe even --

9 A. Right.

03:47 10 Q. I draw your attention now to this specific case. Were you
11 asked in this case to translate specific items for purposes of
12 court?

13 A. Yes.

14 Q. Did you and Miss Vallee divide the workload with regards
15 to those materials?

16 A. Yes.

17 Q. If we have a translation, one of the two of you did it?

18 A. Uh-huh.

19 Q. In addition to your translation duties, did you also
03:48 20 transcribe some documents?

21 A. Yes.

22 Q. Specifically some telephone calls which may not have been
23 in Arabic but -- or may have had some Arabic within an English
24 language phone call?

25 A. Right, I did.

1 Q. Did you translate Exhibits 306, 310, 322, and 324? Would
2 it help if I gave you an exhibit list?

3 A. Yes.

4 MR. CHAKRAVARTY: May I approach, your Honor?

5 THE COURT: You may.

6 Q. Just for the record, I've handed you an exhibit list, and
7 I've directed you to the intercepted telephone calls portion of
8 that list.

9 A. Yes.

03:49 10 Q. You translated essentially all of the exhibits on that
11 list -- all of the transcriptions of telephone calls that Ms.
12 Vallee did not translate, is that right?

13 A. Right.

14 Q. Were those fair and accurate transcriptions and
15 translations to the best of your ability?

16 A. Yes, they were.

17 Q. Were there also some emails for which you did verbatim
18 translations?

19 A. I did.

03:49 20 Q. I direct you to Exhibits 349, 357, and 358. Were those
21 translations that you did?

22 A. I honestly can't see them. It's too little. I can't see
23 them.

24 Q. Perhaps I can project it.

25 A. Yeah.

1 MR. CHAKRAVARTY: Your Honor, can I have the ELMO just
2 for the witness?

3 Q. Is that a little bit better? Can you see that?

4 A. Yes, I can see that.

5 Q. Again, Exhibits 349?

6 A. Yes.

7 Q. 357?

8 A. Right.

9 Q. And 358?

03:51 10 A. Yes.

11 Q. Are those all your translations?

12 A. Uh-huh.

13 Q. Again, like the other ones, are those fair and accurate to
14 the best of your ability?

15 A. They are.

16 Q. Finally, were there a series of stored instant message
17 communications for which you did a portion of the verbatim
18 translations?

19 A. I did.

03:52 20 Q. Specifically, did you translate 495, 496, 533 to 606, 637
21 to 642, 671 through 678, 683 and 684, 687 and 688, and 726 and
22 737? Again, I'll --

23 MR. CARNEY: May I have a moment, your Honor, please?

24 (Discussion held off the record.)

25 Q. Just to clarify for the record -- there were a lot of

1 numbers. I know for you to look at each one might take some
2 time. Before you came to court today, did you tell me or have
3 communicated to me which ones you had translated?

4 A. Yes.

5 Q. Did you translate all of the instant message
6 communications -- stored instant message communications that
7 Miss Vallee did not?

8 A. Yes, I did.

9 MR. CHAKRAVARTY: With that and with a conversation
03:53 10 with counsel, I think -- I'm sorry.

11 Q. Let me just qualify. Are those also fair and accurate
12 translations to the best of your ability?

13 A. They are.

14 MR. CHAKRAVARTY: Given that those items, I believe,
15 are already in evidence, subject to the provisos, those are all
16 the questions I have.

17 MR. CARNEY: I indicated to Mr. Chakravarty that I
18 would stipulate that she translated the numbers that he read
19 off, your Honor.

03:53 20 THE COURT: Okay. Any cross-examination?

21 MR. CARNEY: Excuse me. No, your Honor. Thank you.

22 THE COURT: Thank you, Miss Doursounian. You may step
23 down.

24 MR. CHAKRAVARTY: Your Honor, we're in the ignominious
25 but welcome position of having exhausted our witnesses for

1 today. Things went a little bit faster than yesterday.

2 THE COURT: Well, I guess that brings us to a close a
3 little earlier than expected. But we'll resume tomorrow at 9
4 and continue making some good progress. Enjoy the rest of the
5 day, jurors. We'll see you tomorrow morning. We're in recess.

6 As long as we have some time, why don't I just stay in
7 session with the lawyers.

8 (The jury left the room at 12:37 a.m.)

9 THE COURT: I just wanted to talk about the schedule
03:54 10 for the process that we were talking about with these bulk
11 exhibits, if I can call it that, because -- well, frankly, we
12 should get started on it, I guess. What do you -- the next
13 step I think is for defense objections. Give me a reasonable
14 time frame.

15 MR. CARNEY: The day before your Honor selects for the
16 hearing we would deliver to you specifically what objections.

17 THE COURT: I'm not sure there will be a hearing. In
18 other words, there may be with respect to some matters. But my
19 thought is that what would be given me would be enough to
03:55 20 identify the objections, and I think from that, mostly I would
21 understand the scope of the objection. So to the extent there
22 was argument, it would be a subset.

23 So I don't think that timetable is practical, then,
24 because I'd like to go through them. And then whatever we need
25 to talk about, we can do so. So there should be some review

1 time. I just want to be sure it fits appropriately in the flow
2 of the case. I know everybody has lots to do, but --

3 MR. CARNEY: May I inquire? How many --

4 THE COURT: Why don't I do this: Why don't we just go
5 this far with it. Why don't the parties talk about that, a
6 time frame for -- well, because I guess on the -- what I'm
7 suggesting is, if it's going to be a first cut on paper, then I
8 guess the government would have the opportunity to submit
9 something, too. And then it would be whatever I thought we
03:56 10 needed additional argument on.

11 MR. AUERHAHN: And I did give a list of the ones we
12 expect to use tomorrow with the witness. So if there's any
13 specific objections to any of those specific chats --

14 MS. BASSIL: There will be.

15 MR. AUERHAHN: -- we should probably deal with it
16 before I show it to the witness.

17 MS. BASSIL: There will be.

18 THE COURT: What's the scope of that, Mr. Auerhahn?

19 MR. AUERHAHN: I didn't -- there are probably over two
03:56 20 dozen. Is that correct? Ms. Bassil is holding the list I gave
21 her.

22 MS. BASSIL: Well, what I can tell you is -- okay.
23 The sum total, which doesn't mean that necessarily it's all of
24 them, but the total number of instant messages on the witness
25 tomorrow is 245 pages, approximately. That doesn't mean all --

1 we're going to be using all 245 or that there will be
2 objections to all of them. But that's the sum total of his
3 instant messages.

4 MR. AUERHAHN: We're not using all of his.

5 MS. BASSIL: I'm not using all of them.

6 MR. AUERHAHN: And, certainly, he's not going to read
7 all 245 pages or we're not going to read in questioning. We're
8 just going to excerpt from the list that I gave counsel.

9 THE COURT: And how many individual chats?

03:57 10 MS. BASSIL: Well --

11 MR. AUERHAHN: If I can have the list I gave --

12 THE COURT: Just an estimate, a ballpark.

13 MR. AUERHAHN: May I have the list?

14 MS. BASSIL: Sure.

15 THE COURT: Let me ask it this way: Each chat is
16 separately identified by an exhibit number?

17 MR. AUERHAHN: Yes.

18 MS. BASSIL: Yes.

19 THE COURT: How many exhibit numbers?

03:58 20 MR. AUERHAHN: About -- when I say two dozen, looks
21 like I was off a little. It's between two and three dozen so
22 somewhere under 30.

23 MS. BASSIL: And I had 11 chats I might refer to,
24 which might just mean impeachment with a line or two.

25 THE COURT: Well, I don't know about the government's

1 objections to yours. We've been focusing on your objections to
2 the government's.

3 MS. BASSIL: All right.

4 THE COURT: Well, I guess, can you email that list to
5 Paul?

6 MR. AUERHAHN: Yes.

7 THE COURT: And at least I will be some degree
8 familiar with it. And then we can take it from there.

9 MS. BASSIL: Well, what I can tell you is there will
03:59 10 be some photographs that I will be objecting to. And there are
11 at least two videos, I think, that are problematic in terms of
12 summary translations that are heavy in Arabic.

13 MR. AUERHAHN: With reference to that, as I said, I
14 included them on the list just for counsel's convenience but
15 indicated we're not going to introduce the summary translation.
16 The Court has already ruled on that. But we will play a short
17 segment -- these are videos that were actually sent by the
18 defendant to the witness embedded in a chat. So we're going to
19 play a short excerpt so the jury knows what it is they're
03:59 20 talking about on that particular chat. And no beheading
21 videos.

22 THE COURT: Okay. Well, if you want to identify some
23 of the image exhibits you expect to use, maybe I'll have a
24 chance to be familiar.

25 MR. AUERHAHN: I'll -- the list I provided to counsel

1 included both the videos that I'm going to show while the
2 witness is on the stand as well as the chats as well as the
3 emails as well as the telephone calls. I'll make sure Mr.
4 Lyness has the same list.

5 THE COURT: I think we talked about the government's
6 exhibits on paper so I could -- I have the disks from the JERS
7 system. They're a little clunky to use, particularly the
8 documents as opposed to the media, because you have to go back
9 out as far as I know. You have to keep going back out to find
04:00 10 the next index number. So I don't know.

11 MR. CHAKRAVARTY: We have them here. Do you want
12 binders sequentially numbered, or would you prefer just the
13 exhibits for a particular witness?

14 THE COURT: I think it's useful to get them all.

15 MR. CHAKRAVARTY: We'll leave this here, your Honor.

16 THE COURT: Okay. And you'll talk about the schedule
17 on -- going out so we can get through the mass of the rest of
18 it.

19 MS. BASSIL: So in terms, your Honor, of the things
04:01 20 that I might use, do you want a hard copy of those?

21 THE COURT: I don't know whether there's going to be
22 objections to them. It's a different -- it may be a different
23 issue. What we're dealing with is your 403 objections.

24 MS. BASSIL: Right.

25 THE COURT: I don't know whether the government is

1 going to have 403 objections. They might have other
2 objections, but they may just be dealt with in the course of
3 proceedings.

4 MS. BASSIL: That's fine. All right.

5 THE COURT: Okay. We'll be in recess. Thanks.

6 (Whereupon, at 12:45 p.m. the trial recessed.)
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C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, and Cheryl Dahlstrom, RMR, CRR, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 09-10017-GAO-1, United States of America v. Tarek Mehanna.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

/s/ Cheryl Dahlstrom
CHERYL DAHLSTROM, RMR, CRR
Official Court Reporter

Date: November 2, 2011